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"AMPUTATIONS OF THE BODY POLITIC"
EPISODES IN THE EARLY PUBLIC LIFE OF OLIVER ST. JOHN: 1629-1641

by

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JAMES CRAIG MULDREW

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled "AMPUTATIONS OF THE BODY POLITIC:" EPISODES IN THE EARLY LIFE OF OLIVER ST. JOHN submitted by JAMES CRAIG MULDREW in partial fulfilment of the requirements for the degree of MASTER OF ARTS.

....
Supervisor

John Langdon

....

Date 18. ix. 86

"...parliament is the great body politic, it comprehends all, from the king to the beggar; if so, my lords, as the natural, so this body, it hath power over itself, and every one of the members, for the preservation of the whole. It's both the Physician and the patient; if the body be distempered, it hath power to open a vein, to let out the corrupt blood for curing itself; if one member be poisoned or gangered, it hath power to cut it off for the preservation of the rest.

...my lords, most dangerous diseases, if not taken in time, they kill. Errors, in great things, as war and marriage, they allow no time for repentance; it would have been too late to make a law, where there had been no law."

Oliver St. John, from his
Argument of Law for the Bill
of Attainder against the Earl
Strafford.[1]

"My lords, it is now full two hundred and forty years since any man ever was touched to this height, upon this crime, before myself. We have lived my lords happily to ourselves at home.... let us be content with that which our fathers left us, and let us not awake those sleepy lions to our own destruction, by rattling up of a company of records, that have lain for so many ages by the wall, forgotten.... they may sometimes tear your posterity in pieces."

The Earl of Strafford, warning
the commons against the
possible effects of a bill of
attainder.[2]

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[1] The idea that the ills which plagued Charles I's government were so serious that they needed to be cured by drastic amputation was St. John's favorite metaphor. John Rushworth, The Tryal of Thomas Earl of Strafford, (London, 1680), pp.702-703.

[2] Rushworth, Tryal, pp.659-660; CSPD 1640-1641, p.543.

ABSTRACT

The name of Oliver St. John has often been associated with John Hampden's trial of 1637 and opposition to the ship money levies, but curiously little is known about the man. His role in opposing Charles I's government before the outbreak of the Civil War has not been investigated in any detail, and such a task forms the substance of this study. Some events in his early life are looked at, but the focus is directed towards the ship money trial, and what St. John did in the first year of the Long Parliament. In this parliament he led the attack on ship money, and was most responsible for finally bringing the Earl of Strafford to the block. He also drew up the Root and Branch Bill and later the Militia Bill. His ideas on the constitution are notable for the emphasis they placed on the body of parliament, and are consistent with his actions. Both demonstrate that he was one of the most radical man in parliament during these crucial years.

NOTE ON STYLE

In giving dates, the Julian calendar has been used, with the year beginning at 1 January. In quotations, spelling, and punctuation where necessary, have been modernized.

ACKNOWLEDGEMENT

This thesis owes a great debt to the scholarly guidance of Professor W.J. Jones. For the last four years, his knowledge, interest in my work, and friendship have been invaluable. His assistance, and the great deal of time he has spent answering questions and reading almost illegible drafts is deeply appreciated and will not be forgotten. Thanks must also be offered to Professor Philip Lawson who assumed the task of supervision when Dr. Jones went on sabbatical, and read through the final draft.

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LIST OF ABBREVIATIONS USED IN FOOTNOTES

Baillie	D. Laing (ed.), The Letters and journals of Robert Baillie.
CCSP	Calendar of Colonial State Papers.
Clarendon	Edward, Earl of Clarendon, The History of the Rebellion and Civil Wars in England.
CJ	Journal of the House of Commons.
CSPVen	Calendar of State Papers, Venetian.
CSPD	Calendar of State Papers, Domestic.
DNB	Dictionary of National Biography.
Gardiner, History	S. R. Gardiner, History of England from the Accession of James I to the Outbreak of the Civil War.
HMC	Historical Manuscripts Commission.
LJ	Journal of the House of Lords.
Rushworth	John Rushworth, Historical Collections.
SR	Statutes of the Realm.
State Trials	Cobbett's Complete Collection of State Trials.
Whitelocke, Memorials	Bulistrode Whitelocke, Memorials of the English Affairs.

I. INTRODUCTION

On April 29, 1641 Oliver St. John stood up in Westminster Hall to prove by argument of law why the commons had chosen to pass a bill of attainder judging the Earl of Strafford to be guilty of high treason. The commons had initiated the proceedings against the Earl soon after the opening of parliament, and had since prepared an elaborate case which endeavored to prove that Strafford was guilty of attempting to subvert the fundamental laws of England and set up an arbitrary government. The trial had begun on March 22 with the commons as Strafford's accusers and the peers as his judges. For many the trial was the climactic event of the Long Parliament up to this time, and it commanded peoples' attention for a month and a half. The initial proceedings, in the cavernous space of Westminster Hall, were involved and lengthy. Modern proceedings of justice imply an aura of solemnity, but Westminster Hall -the hub of England's legal system- was always a bustle of activity. Cases heard before the courts attracted many people, and in the early years of the Seventeenth-century shops lined the walls to provide them with food and beer. The importance of Strafford's trial magnified this activity. Tiers of benches were constructed on both sides of the Hall (the shops had been forced to move outside in the early 1630s when one shopkeeper almost started a disastrous fire), in which the members of the commons sat with 300-400 spectators. Since proceedings usually lasted from eight in the morning to three of four in the afternoon, and no one could leave or re-enter during this period, loud conversations were common during even the smallest break in the trial, and eating and drinking was prevalent. Robert Baillie, a Scottish divine in London to negotiate for his country, complained about the lack of gravity when so much was at stake. Many, he observed, turned their backs and let water through the forms on which they sat during proceedings.[1]

But from mid-April tension mounted as it became clear that a majority of the lords were not willing to convict Strafford on the basis of the commons evidence. It was for this reason that the commons turned to proceed by way of a bill, and by the time St. John rose to speak a heavy silence had fallen over the Hall. Standing symbolically in the midst of the commons he presented an elaborate argument showing how Strafford could be legally convicted by way of bill, but as he approached the end of his speech he violently urged Strafford's condemnation in words that became famous in his own day:

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[1] The Letters and Journals of Robert Baillie, (ed.) David Laing, (Edinburgh, 1841-1842), I, pp.314-316; Thomas Birch (ed.), The Court and Times of Charles I, (London, 1848), II, p.99.

> ...he that would not have had others to have a law, why should he have any himself? ...It's true, we give law to hares and deers, because they be beasts of chase: It was never accounted either cruelty or foul play, to knock foxes and wolves on the head, as they can be found, because these be beasts of prey. The warrener sets traps for polecats and other vermin, for the preservation of the warren.[2]

Clarendon claimed that in these words, "the law and humanity were alike; the one being more fallacious, and the other more barbarous, than in any age had been vented in such an auditory." For John Selden they symbolized all the authority the Long Parliament claimed for itself. Even one recent historian has called them outrageous.[3] They are still cited, but little is known about the man who spoke them. In his own lifetime St. John was well known, but his fame, curiously, has not survived the test of time.

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[2] John Rushworth (ed.), The Tryal of Thomas Earl of Strafford, (London, 1680), p.702-703.

[3] Clarendon, I, 307; The Table Talk of John Selden, (ed.) Samuel H. Reynolds, (Oxford, 1892), pp.128-129; Robert Ashton, The English Civil War., (New York, 1978), p.136.

St. John was born into a mere gentry family and trained to become a lawyer at Lincoln's Inn. He became successful but not wealthy, and did not become known until he defended John Hampden in the Ship Money Trial of 1637. He sat in both the Short and Long Parliaments, and very rapidly became one of the most influential members of the latter. He was one of the government's harshest critics and strongest opponents. He was appointed Solicitor-General in January 1641 but did his monarch little service. In 1648 he became Chief Justice of the Court of Common Pleas and played an important part in the Commonwealth, both as a judge and counsellor of state. He survived the restoration but left England in 1662 and spent the rest of his years in exile, dying in Augsburg in 1673.

St. John has been mentioned in numerous specialized works on the Civil War, Long Parliament, and Commonwealth, but has attracted no biographer, and has not received the attention given to other important figures such as John Pym, John Hampden, Henry Vane Jr., and Cromwell. It is difficult to know why this should be so, but the historian is always faced with a dilemma when attempting to assess documents, events, and people. Some have been latched upon by later ages and given more importance than they possessed in their own time; some have been judged correctly; and some, like St. John, important in their own day have been neglected by posterity. There is enough information on the man, but his personality has always been problematic. He was described as being:

> ...reserved, and of a dark and clouded countenance, very proud, and conversing with very few, and those, men of his own humor and inclinations.[4]

He was not gregarious like Pym; not religious in the same way as Vane Jr.; nor tumultuously governed by the emotions of a Cromwell. He was a careful man who preferred to plan all that he did in advance. He never deliberated out loud in parliament -he knew what he wanted and when he spoke it was always to the point. The tone of his utterances was usually impatient, often angry, and at times, such as the one already cited, violent. Such a cold exterior and lack of sentimentality endeared him to neither the Eighteenth or Nineteenth-centuries, and this neglect is the heritage of the present. Adding to the problem is the fact that St. John lived much of his life in a shadow. Once he became Solicitor-General he was forced to work from behind the scenes, getting other people to introduce his most radical bills for reform so as not to jeopardize his position. He used secretiveness to manipulate people and to maintain his popularity with those not as radical as himself, and continued this way of doing things into the Civil War and through the Commonwealth. He was called the 'dark lanthorn' of the Commonwealth by some royalists.[5]

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[4] Clarendon I, 246.

The only really specific modern research that deals with him has been done by Professor Valerie Pearl in her two articles: "Oliver St. John and the 'middle group' in the Long Parliament: August 1643-May 1644," and "The 'Royal Independents' in the English Civil War."[6] Her research focuses on a very small part of St. John's life and, as she admits, represents only a beginning. Her focus is not entirely on St. John; she uses him as an example to demonstrate that the ambiguous reluctant revolutionaries of J.H. Hexter's so called 'middle group' survived beyond Pym's death in late 1643.[7] Pearl sees St. John as Pym's successor. A leader of the commons who was more moderate than radical: a reluctant revolutionary, not opposed to peace negotiations, driven to defend the ancient constitution by force of circumstance.[8] The evidence for this view is taken only from the short portion of St. John's life examined in the articles. But his early life suggests that he was much more of a radical than Pearl suggests. Since it seems logical to start at the beginning if subsequent actions are to be put in their proper context, that is what will be done here - to open up the first chapters on St. John's life and dust off the pages.

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[5] St. John made a note of this in the self-serving defence he published to protect himself after the restoration. The Case of Oliver St. John Esq., (London, July 30, 1660), p.3.

[6] The first was published in the English Historical Review 81 (1966), and the second in Transactions of the Royal Historical Society, Fifth Series 18 (1968), pp.69-96.

[7] This thesis was first put forward by Hexter in his seminal work The Reign of King Pym, (Cambridge, Mass., 1941), pp.31-99.

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[8] Pearl, "Oliver St. John," pp.492-493, 501, 504, 507-508; Pearl, "Royal Independents," pp.75-81.

II. ST. JOHN'S EARLY LIFE AND THE AFFAIR OF THE DUDLEY LETTER.

Oliver St. John was probably born about 1588. His father was Oliver St. John of Cayshoe in Bedfordshire; his mother Sarah Buckley from the same county.[1] Almost nothing is known of the elder St,John, but if rumors are to be believed then he was probably the bastard son of either the second or third Earl of Bedford. This was claimed by both the mother of St. John's first wife, and the author of The Good Old Cause.[2]

The Russell family was related to the St. John's of Bletso in Bedfordshire. Francis Russell, the second Earl of Bedford married Margaret daughter of Sir John St. John and thus he became the cousin of the Oliver St. John who was created Baron St. John of Bletso in 1559. Supposedly, the Oliver that was the father of the subject of this work was the grandson of the first Baron St. John of Bletso through the latter's son Thomas, but as he was probably an illegitimate Russell undoubtedly some arrangement was made with the Baron for Thomas to raise the young boy.[3] The St. Johns had been an important family in Bedfordshire since the early Fifteenth-century but because Oliver's (b. 1598) father was not really a descendant he had little to do with this family during his lifetime. Throughout most of his early life St. John remained much closer to Francis Russell, the fourth Earl of Bedford (1593-1641), whom he probably knew as a boy.

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[1] Edward Foss, The Judges of England, (London, 1857), VI, p.475.

[2] Arthur Searle, (ed.), Barrington Family Letters, 1628-1632, Camden Society, Fourth Series 28 (1983), p.119; The Mystery of the Good Old Cause, (London, 1660; Reprinted by John Camden in 1863), p.23.

Perhaps because of his birth, St. John's father remained a man of slender fortune (compared to his real and ostensible relatives), tied to his estate and unimportant in county politics. But he was evidently able to use his family connections to the advantage of his son. The young Oliver entered Queen's College Cambridge in August 1615; admitted as a pensioner under the tuition of John Preston the Puritan divine who undoubtedly had some influence on St.

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[3] DNB, XVII, W.A.J. Archibald, "Francis Russell, second Earl of Bedford,"p.431-433; C.H. Firth, "Oliver St. John" (1598-1673), p.640-646; A.F. Pollard, "Oliver St. John, Viscount Grandison and Baron Tregoz," pp.637-640.

John's Calvinist beliefs.[4] He might also have had some formative influence on the young man's political ideas but this is impossible to prove because St. John's politics were not motivated by religion. He looked to God to justify what had already been undertaken. He was religious, but in a very private way.[5]

From Cambridge, St. John moved to Lincoln's Inn to study law. He entered on April 22, 1619 and studied until he was called to the bar in 1626 at the age of 28. In 1622, Preston was appointed preacher at Lincoln's and St. John was able to continue his association with this man. Here he also associated with a number of men whom he would later work with, including John Glyn, Robert Holborne, Henry Parker, and Harbottle Grimston.[6] Sometime in the late 1620s St. John was employed by his friend and relative, the fourth

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[4] Foss, Judges, VI, p.476; Irvonwy Morgan, Prince Charles' Puritan Chaplain, (London, 1957), pp.18-25, 34-40.

[5] Christopher Hill, "The Political Sermons of John Preston," in Puritanism and Revolution, (New York, 1958), pp.239-274. St John's sense of justification is expressed very forcefully in a letter he wrote to Cromwell after the latter's victory at Dunbar. See John Nickolls (ed.), Original Letters and Papers of State Addressed to Oliver Cromwell, (London, 1742), pp.24-26. For a more detailed discussion of St. John's religious views see below pp.276-279.

[6] Records of the Honorable Society of Lincoln's Inn, I, (Admissions: 1420-1799), (London, 1896), pp.182, 172, 188, 202.

Earl of Bedford, to deal with his legal affairs. From this point on he remained in London working as a lawyer. His future was here, not in Bedfordshire. He seems to have had little more to do with the family in which he was raised.

St John's practice was modest and he harbored no ambition for government office or desire to scramble up the bureaucratic ladder towards success, but his name suddenly became prominent in 1629, when he was arrested upon suspicion of writing a pamphlet to stir up opposition to the government with outlandish claims.This tract was entitled A Proposition for his Majesties Service to Bridle the Impertinence of Parliaments and advocated setting up of a type of police state in England to end the "practices of troublesome spirits." It argued that, "there is a greater tie of the people by force and necessity, than merely by love and affection." To achieve such ends, fortresses would need to be built throughout the kingdom and garrisoned with mercenaries; the highways guarded; travel passes issued; and information kept on all inns. All the king's subjects would be required to take an oath acknowledging the power of the king's prerogative to make or reverse any law without parliament. Once England had been turned into an armed camp, this elaborate police machinery could be financed through enforced taxation. Various projects were suggested to bring upwards of two million pounds a year into the king's hands.[7]

As it turned out, St. John did not write this pamphlet. He apparently found a copy of it in Sir Robert Cotton's library and had planned to publish it anonymously. It had actually been written sixteen years earlier by Robert Dudley. Dudley was the son of the Earl of Leicester, and had left England in 1605 after failing to prove in court that Leicester was actually married to his mother when he was born, so he could claim the titles of his father, and uncle, Ambrose Dudley the Earl of Warwick. Once out of the country he was prevented from returning because he abandoned his own wife and married his mistress in France by papal dispensation after becoming a catholic. He settled in Florence and wrote numerous pamphlets which he sent back to the English court in an effort to regain favor and be allowed to return.[8] This particular document was sent as advice to king James after the failure of the Addled Parliament of 1616.[9] Dudley's friend Sir David Foulis presented it to Robert Carr the Earl of Somerset, who was a privy counsellor and related to Dudley's father through his second marriage. Somerset laid it aside after scant consideration because he thought it was too "fantastic a project," and eventually placed it among some papers he deposited in Cotton's library.[10]

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[7] Rushworth, I, appendix, pp.12-17.

[8] Sidney Lee, "Sir Robert Dudley," DNB, VI, pp.122-123.

[9] S.R. Gardiner (ed.), Fortescue Papers, Camden Society, New Series 1 (1871), pp.11-12.

It remained there, buried and unnoticed in a bundle of records until St. John came across it while searching for information on sewers to help Bedford put together his scheme to drain the Fens.[11] It was obvious that the tract had been written before 1623 because it proposed that prince Charles should be engaged in a Spanish match so all the nobility could be charged to become Spanish grandees.[12] St. John decided to publish it as a piece of political satire. It was to be claimed that the paper had been found among those of the recently assassinated Duke of Buckingham. A suitable reply was to be written to go with it.[13]

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[10] State Trials, III, 396; Kevin Sharpe, Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England, (Oxford, 1979), p.143.

[11] CSPD 1629-1631, p.110.

[12] Rushworth, I, Appx., p.17.

[13] CSPVen 1629-32, pp.241-242.

The intent of this publication, in the charged atmosphere after the dissolution of the session of 1629, would have been obvious to contemporaries. It would have implied that the king's government was mounting an attack on legally defined freedoms, the first object of which was to destroy the rights of parliament, where the laws were made and upheld. The wild and completely illegal schemes for raising taxes mentioned in the tract would be seen as an obvious reference to what parliament claimed was the illegality of the enforcement of the forced loan, condemned by the Petition of Right, and the continued collection of impositions and tonnage and poundage after the Petition had been granted.[14] Hence there was an obvious link to the ideological questions debated in the sessions of 1628 and 1629 dealing with the boundary between the king's prerogative and the subject's rights. The connection with Buckingham is evidence of a lingering hatred towards the man, and it echoed the feelings expressed in 1628 that he was the counsellor most responsible for advising the king to proceed with illegal methods rather than calling parliament.[15] The meaning implied here bears a strong resemblance to John Eliot's plea voiced during the final shambles of the session of 1629, that the kingdom was in a miserable condition and it was the duty of true Englishmen to defend the rights and liberty of the subject and to prove themselves to be freemen.[16] St. John obviously supported Eliot's willingness to go much farther than the majority of M.P.s in expressing plainly that he believed Charles' government was on the wrong track. The Venetian Ambassador reported that had the tract been published a great scandal would have ensued.[17]

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[14] For a discussion of the opposition to the enforcement of the forced loan, and the Petition of Right see below, pp.65-70, 272-276. For a discussion of the continued collection of tonnage and poundage and the cases of Henry Rolle and Richard Chambers see, W.J. Jones, Politics and the Bench, (London, 1971), pp.75-78, 163-164; Conrad Russell, Parliaments and English Politics, 1621-1629, (Oxford, 1979), pp.386-387, 400-402.

As it was, the scandal that erupted, when the privy council discovered the plan to circulate the the tract, was large enough. Apparently, after discovering the document, St. John sent it to Bedford at Woburn in Bedfordshire, who then gave it to Somerset to consider. St. John must have also shown it to Cotton who had a number of copies made.[18] Eventually one of these copies found its way into the hands of Wentworth who soon informed the council about it.[19] Cotton was taken into custody in early November 1629 and his library was sealed up. He was questioned, and Somerset, Bedford, and the Earl of Clare were implicated and placed in custody. Selden, who was already in the Tower for what he had done in Parliament, was also implicated and had his papers seized. Soon after, St. John and his friend Richard James, Cotton's librarian, were put in the Tower.[20] The council had discovered that the planned publication was their doing because Clare, Bedford, and Somerset were set at liberty, although they would be required to answer before Star Chamber for their involvement in the affair. St John as the fomenter of the project was said to be in danger of the rack, although he too was out of jail by the end of the year.[21] The whole business finally came before Star Chamber on May 29, 1630. The defendants denied that there was any plan to libel the king's government, and argued that this could not have been so since the tract was written in king James' time. David Foulis was produced as a witness by Somerset, Bedford, and Clare to prove that it had actually been written by Dudley, who they called a "brain-sick traveller." This revelation, which had been reported to the king earlier, took the teeth out of the prosecution. Charles used the birth of his first son as an excuse to bring proceedings to a halt. He extended his royal mercy to the defendants, but the document was ordered to be burned as "seditious and scandalous."[22]

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[15] Russell, Parliaments, p.384; Mary F. Keeler, M.J. Cole, W.B. Bidwell (eds.), Commons Debates 1628, (New Haven, 1977-1983), vol. IV, pp.115, 116, 117, 120, 121, 125, 130-133, etc..

[16] Wallace Notestein, F.H. Relf (eds.), Commons Debates for 1629, (Minneapolis, 1921), pp.259-261. For a discussion of the dissolution of the session of 1629 see below, pp.114-124.

[17] CSPVen 1629-1632, pp.241-242.

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[18] Cotton later claimed that he received the tract from the Earl of Clare and never knew that it had been found in his library, but this was said to protect himself and his institution after the latter had been locked up by the council because it allegedly contained just such seditious material. State Trials, III, p.396; The Autobiography and Correspondence of Sir Simonds D'ewes, (ed.) James O. Halliwell, (London, 1845), II, pp.40-41; CSPD 1629-1631, P.110.

[19] D'ewes, Autobiography, pp.40-41.

[20] CSPD 1629-1631, pp.89, 96, 97; Birch, Court and Times, II, p.36.

The tract had been intended as criticism of the government, but it was satirical criticism. Satire was definitely the object of some censorship, and was virtually destroyed as a literary form for this reason, but much was still published in drama and popular verses. It represented a no-man's land where one might criticize the government, but at the risk of getting into trouble.[23] Obviously, attorney-general Heath thought the Dudley tract went too far when he described it as a "false," "scandalous," "seditious," "pestilent discourse" framed by wicked malicious persons ill affected to the king.[24] But still, it

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[21] CSPD 1629-1631, pp.96, 98; Barrington Letters, p.119; Birch, Court and Times, p.44.

[22] State Trials, III, pp.395-400.

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[23] For an example of a comically satirical anti-masque put on by the king's attorney-general, William Noye and others, which blatantly ridiculed projectors and monopolists and was viewed and enjoyed by the king see, W.J. Jones, "'The Great Gamaliel of the Law': Mr. Attorney Noye," The Huntington Library Quarterly 40 (1977),pp.215-216. The government's censorship was selective. Ben Jonson, who was a friend of Cotton's and spent much time in his library, was interrogated in late 1628 on suspicion of having written verses which began, "Enjoy thy bondage...," CSPD 1628-1629, p.360. Christopher Hill has recently assessed the presence of political controversy in literature, and government attempts to censor it in two essays: "The Pre-Revolutionary Decades," and "Censorship and English Literature," in The Collected Essays of Christopher Hill: Volume One, Writing and Revolution in 17th Century England, (Amherst, 1985), pp.3-71. Two works which deal with this theme in more detail are: Margot Heineman, Puritanism and Theater: Thomas Middleton and Opposition Drama under the Early Stuarts, (Cambridge, 1980); Jonathan Dollimore, Radical Tragedy, (Chicago, 1984). Dollimore especially has some interesting things to say about the anti-masque.

A subject which deserves more attention than it has received is the proliferation of political opinion voiced in popular ballads and verses that were often printed. John Rous, the diarist, collected a number of these from the 1620s and 1630s, complaining of their vulgar origin. The relaxation of censorship during the Civil War caused a great increase in the printing of this sort of thing and caused Edmund Waller the royalist plotter and poet to derogate satire , saying that, "at Billingsgate one might hear the heights of such wit." The Diary of John Rous, (ed.) M.A. Everett Green, Camden Society 66 (1856), pp.8, 19-22, 26, 29-30, 31, 38-39, 42-43, 54-55, 71-75, 77-79, 80, 83-84, 88-90, 101-103, 109-111, 115-119, 124; Aubrey's Brief Lives, (ed.) O.L. Dick, (Harmondsworth, 1949), p.49.

[24] State Trials, III, 397-398.

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was not worth courting more unpopularity in 1629-1630 by prosecuting three peers and two eminent antiquarians (Selden and Cotton) over something that had been written sixteen years before. Had it been published some sort of sentence might have been passed on St. John and James, but as it was nipped in the bud Charles could afford to sweep the whole business under the carpet.

St. John's association with Richard James is further evidence of the former's antipathy towards the court at this time. James has curiously been ignored by historians, but he was just the sort of person to be attracted by St. John's proposed scheme. James was also a friend of Cotton, Selden, and John Eliot. He was a minor poet and interested in the collection of antiquarian artifacts and knowledge. Prior to his imprisonment in this case he had been in trouble with the council for publishing satirical verses, and for a period in the late 1620s he had been banished from London. He hated Charles I and Buckingham, and wrote a poem commending John Felton, Buckingham's assassin,

> ...whose brave hand
> Hath once begun to disenchant our land
> from magic thraldom...

He called the Duke "one of the most ugly favorites that ever imaginary prince made choice of."[25] In letters to Cotton he complained of Charles' "wicked pride and practice," and hoped that, "the tant of his prerogative will everlong bear him under or over." He worried about Eliot's and Selden's imprisonment and wondered if the "tide would ever turn."[26] He translated an epigram of Nicharchus' which James might have found amusing, but which was obviously meant to insult the fastidious Charles:

> Farts stifled in ye guts make many die,
> Again they save, if forth they rumbling fly;
> Then be not proud great princes, since farts have
> As great a power as you, to kill or save.[27]

In a fascinating piece of correspondence from the early 1630s James even discussed whether the assassination of tyrannical and evil princes could be justified ethically and politically. The letter was written in answer to an unknown friend who was apparently considering that Charles might have to be assassinated. James replied that it was not right to kill princes even if they "deserve ill" because it would still be murder, and because turmoil and conflict might well engulf the state as a result. Yet James warned that if princes would not purchase their people's love with justice and goodness, some kind of action would have to be taken.[28] It is unfortunate that the person to whom the letter was written is unknown, but it shows that St. John was associated with a shadowy group of people who already believed at this early date that something definite had to be done about Charles' government. It is unlikely that Cotton, Selden or any of the peers implicated shared these ideas of St. John and James, although they sympathized to a degree with the criticism of Charles' court.[29] Cotton's library produced a link between the the moderate parliamentary "opposition" which produced the Petition of Right, and a small underground body of harsher opinion. Eliot seems to have had a closer connection with these people. He corresponded with James, and the latter planned to publish the Monarchy of Men.[30] If Eliot's actions in Parliament had something to do with this group then it might be that these men had a significant effect; otherwise they had little direct influence on the politics of the time. But St. John's involvement shows he already believed that the government had violated certain rights and liberties, and was continuing to do so in spite of the Petition of Right.

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[25] The Poems Etc. of Richard James, (ed.) Alexander Grosart, (London, 1880), pp.xlii, 197-199.

[26] Ibid., pp.xxxiv, xxxv, xxxiii, xxxix.

[27] Ibid., pp.238.

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[28] Ibid., pp.281-292.

[29] Sharpe, Cotton, pp.141-145, 181-187, 212-214, 236-237, 243-244. James was not of the same social standing as the rest. He had no means of making money and supported himself by borrowing and charging fees for lending out manuscripts from the library -a practice which the earnest Sir Simonds D'ewes found intolerable. D'ewes, Autobiography, II, 39-40.

[30] Sharpe, Cotton, p.214; Harold Hulme, The Life of Sir John Eliot, (New York, 1957), pp.358, 371.

Soon after St. John was released from the Tower he entered into negotiations with the Barrington family in hopes of marrying Joan Altham, the only child of Sir James Altham and Elizabeth Barrington. Elizabeth Barrington, now the wife of Sir William Masham (Altham had died earlier) was the daughter of Sir Francis Barrington and Joan Cromwell; the aunt of Oliver the future Lord Protector.[31] The negotiations were undertaken on behalf of St. John by Bedford and Nathaniel Rich, a distant relative of the Earl of Warwick and an associate of St. John. The progress of the match is detailed in a series of letters written to Elizabeth's mother Joan, the powerful matriarch of the Barrington clan. On January 29, 1629 Sir Thomas Barrington, Elizabeth's brother, told his mother that he had been in contact with Rich about St. John. He was obviously in favor of the match, and described St. John as:

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[31] Barrington Letters, pp.2, 26-27.

> ...religious, honest, of sweetness in nature, discreet, his estate in land some 300 pounds by the year, his practice I believe near double, handsome for person, probable to rise, my Lord Bedford's only favorite...[32]

Joan's mother Elizabeth had also listened to Rich's proposal, but she took a much more sober, and probably realistic view of St. John. She claimed that his estate was small, not above 200 pounds a year, and his practice little. Besides this, she reported that he had lately been in the Tower and that his father was a base son.[33] Throughout January, Elizabeth continued to write to her mother craving advice on the proposed match. She approved of St. John's character, but worried about his financial situation. She claimed that she would accept much less from such a man, but still God commanded her to look for a "competency of outward estate." She had heard from Rich that St, John was already spending 500 pounds a year on himself which would leave Joan,

> ...but little to pay houserent and maintain housekeeping if they keep any, or else to sojourn in another bodie's house.[34]

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[32] Ibid., p.116.

[33] Ibid., p.119.

[34] Ibid., pp.119, 120.

The Barrington family were puritans, and throughout Lady Elizabeth's correspondence there exists a conflict between her belief that a man should be judged primarily by his character, and her wish to see that her daughter obtained a fair estate out of the match. At one point her brother-in-law by her first marriage, Sir Edward Altham, proposed that he would find a lord for for Joan to marry, but Lady Elizabeth turned him down because she feared that, "...few lords have the main, I mean the true fear of God, which I prefer before all the honor in the world."[35] Unlike many mothers of gentry families Elizabeth was not primarily concerned with social advancement for her daughter. What she desired was Godliness with a reasonable level of "bourgeois" financial ability. St. John's studious seriousness was desirable, but his financial situation was a problem. He would probably never have been successful if Bedford had not intervened and offered him financial assistance in the form of a jointure for Joan from his own estate.[36] This shows how close the relationship between the two men was, and that St. John had a stake in the Russell family.

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[35] Ibid., p.123.

[36] Ibid., p.116.

Bedford's offer of a jointure was almost too little to quell the fears of Lady Elizabeth. By January 26 she was ready to break off negotiations despite continued pressure by Bedford. She feared that her daughter would be vulnerable to any litigation entered into by the Earl's children after his death:

> ... but how inconvenient it may be for her posterity to enjoy that which by right belongs to my lord's own children (if he should give anything for inheritance) I would have well to be weighed, for though in my lord's days she might enjoy it with comfort, yet I know not what discomfort she may receive from his children after him.[37]

Negotiations were not broken off though. They continued throughout February of 1630. The Earl of Warwick stepped in to help St. John, and a marriage finally took place sometime in late April. Lady Elizabeth apparently reconciled herself to Bedford's offer. After the marriage she remained close to her daughter and stayed with the St. Johns on occasion.[38] This marriage shows the worries women had to contend with to provide some sort of financial security for themselves, and also the difficulties a man of St. John's means faced attempting to marry into a prominent gentry family.

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[37] Ibid., p.125.

[38] Ibid., p.226.

Soon after St. John had married, he became involved in a company to colonize Providence Island off the coast of Nicaragua. The initiative behind the formation of this company came from the Earl of Warwick, who had first heard of the island from the captain of a ship he had hired.[39] News of the discovery was kept fairly quiet and the company was planned privately. Most members had already agreed to join when subscriptions came out for the first voyage. It was not surprising that Warwick should organize such a venture. He had already been involved with the Virginia Company, the Sommers Islands Company, the Guinea Company, and since 1627 he had had authorization to engage in general privateering against the Spanish.[40] Initially 2,000 pounds was subscribed in shares of 200 pounds each. When the first ship returned in the summer of 1630 it was decided to institute a formal company, and an additional 300 pounds was called up on each share, although many of the shareholders were soon in arrears.[41] The company was given letters patent in December and its members included Warwick, Holland, Saye and Sele, Lord Brook, Benjamin Rudyerd,

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[39] Diary of John Rous, p.43.

[40] Newton, Colonizing Activities, pp.34-38, 51.

[41] CSPC 1574-1660, pp.121-122; William R. Scott, The Constitution and Finance of English, Scottish and Irish Joint Stock Companies to 1720, (Gloucester, Mass., 1968), II, 327-328.

Nathaniel Rich, John Pym, and St. John (Sir Thomas Barrington joined soon after). Holland was to be the first governor, and Pym was elected treasurer. St. John probably became involved because he knew Warwick and Nathaniel Rich. He had also undoubtedly worked with Pym, who was also employed by Bedford. St. John acted as the company's legal representative. He drew up the letters patent, and dealt with subsequent legal problems the company encountered.[42]

The Providence Island Company is usually cited as the nucleus within which opposition to the government in the 1630s was organized. This was true to an extent, but the company was not set up to be a meeting place to organize opposition, it was intended to colonize an island and make a profit. It has become linked with the idea of "opposition" because of its membership, not vice versa. The core of the the company was the group centered around Warwick, Nathaniel Rich, and their Essex connections, but many of the other individuals involved had criticized government policy in the 1620s. It was only natural that they would continue to discuss politics and plan measures to oppose ship money -for instance. The company brought them together but was not a means for opposition. This group was important, though, because however small it was, and however rudimentary its organization, its members were the most prominent opponents of Charles' fiscal policies, and they continued to call for another parliament.[43] Bedford and Hampden were involved with these people, and neither was a member of the company.

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[42] CSPC 1574-1660, pp.141, 191; Newton, Colonizing Activities, p.86.

The story of the company itself is an interesting one. St. John as a member of the governing council played a part in its evolution. The initial purpose of the venture was to grow crops for export. The profits from this would be used to build a series of defences on the island so that it could be used as a base for attacks on the Spanish treasure fleets. By the mid-1630's the profits expected had not materialized. Thirty thousand pounds had been invested, and much of this was put into the work of fortification.[44] The company had innumerable difficulties governing the venture from London. The planters were not happy with conditions and complained of only being able to keep half the profits they earned from their efforts.[45] The Spanish attacked the island in 1635 and were driven ~~off, but this this~~ threat led the planters to demand more men and money for the fortifications.[46] The governing council attempted to intervene in the smallest details of life on the island. It was concerned to promote a pious regulated existence aimed at promoting stability and maximizing production, but this was impossible considering the conditions of life in the Caribbean. Servants ran away, work was slow, and the council deliberated whether the less expensive and more controllable labour of slaves would justify the social problems they might create.[47] At one point the council ordered the governor to ban "cards, dice and tables," and to promote "chess and shooting" On another occasion they ordered supplies to be withheld from those who refused to work.[48]

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[43] The term opposition is used here very loosely. Of course there was no organized "opposition," but individuals could, and did oppose government policies and high ranking officials, but not always consistently.

[44] CSPC 1574-1660, pp.181-182; Newton, Colonizing Activities, p.202; Scott, Joint Stock Companies, II, 332-333.

[45] CSPC 1574-1660, p.147.

Profits increased through the cultivation of cotton, tobacco, drugs, and dyes, but they were never enough to offset the cost of fortification. In December of 1635 the company approached Charles to ask him to help build defences on the island, emphasizing the Spanish threat. He provided no financial assistance but stated that any ship the adventurers could take from the Spanish would be declared a lawful prize.[49] The company itself cooperated with the crown -the adventurers were not alienated from the government. Providence Island was attacked and taken by the Spanish in 1641, but the company was able to recoup its initial investment from the ransom of a Spanish prize worth 50,000 pounds.[50]

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[46] Ibid., pp.185-186; Scott, Joint Stock Companies, II, 333.

[47] Newton, Colonizing Activities, pp.149, 204.

[48] Ibid, p.161; CSPC 1574-1660, p.150.

Apart from his involvement with this company, St. John continued to be employed by Bedford to deal with the tangle of legal problems created by his massive scheme to drain the Fens. When Bedford decided to incorporate a "Society of Conservators of the Fens," St. John was one of the members.[51] He continued to reside at Lincoln's Inn although he made visits to Essex occasionally.[52] Soon after his marriage, St. John became involved in a lawsuit with Sir Edward Altham, the younger brother of his mother-in-law's first husband Sir James Altham. Sir James had left money in his wife's charge for his only daughter for when she should marry. Sir Edward, however, claimed legal title to his brother's estate. Some attempt was made by the family to mediate the affair, but no love was ever lost between St. John and Altham. The matter was taken to Chancery where it inevitably dragged on for years, largely due to Sir Edward's efforts. The family seems to have taken St. John's side in the dispute.[53]

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[49] Newton, Colonizing Activities, pp.202-203.

[50] Scott, Joint Stock Companies, II, 335-336.

[51] Samuel Wells, The History of the Drainage of the Great Level of the Fens, called Bedford Level: with the Constitution and Laws of the Bedford Level Corporation, (London, 1830), I, 126-127.

[52] Barrington Letters, p.200.

As for politics, a few letters survive which show St. John reported to the Barrington's on affairs in London. He also followed the Thirty Years War closely, and took the successes and failures of the protestant cause very seriously.[54] Like his friends, he also continued to hope for a parliament. His wife wrote to her grandmother that:

> My husband commands me to tell you there shall be a parliament; you may believe it for it came from my Lord Treasurer who told it to my Lord Bedford of a certain. Whither it be a cause of joy or sorrow, the success will show.[55]

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[53] *Ibid*, pp.177-178, 180-182, 211, 229-230.

[54] *Ibid*., pp.211, 226.

[55] *Ibid*., p.222.

There was no parliament in 1631 or 1632, but five years later St. John's argument for a parliament and against the ship money levies would make him famous.

III. THE SHIP MONEY TRIAL

The first writs for ship money in the reign of Charles I were issued in 1634. Here past practice was observed and only the maritime ports and some surrounding areas were charged. But from 1635 to 1639 the whole country was asked to supply money towards the building and upkeep of the king's navy. St. John's name has become inexorably linked with the opposition to these levies, and justifiably so, because in his defence of John Hampden in 1637 he provided an ideological argument against the legality of ship money which became etched in the parliamentary language of succeeding generations By 1637 there were many who were unhappy with the tax for numerous reasons and because of this the ship money trial became something of a sensation. When it was over, after eight tense months, the judgement went for the king, but St. John's argument was well known throughout the country, and it convinced many that there was no legal basis for the collection of ship money no matter what the judges had said.

Ship money was the greatest and, in the end, the most damaging of the government's projects to raise revenue in the 1630s without a parliament. The parliaments of the

1620s had been failures as far as supplying Charles' fiscal needs went. He had called three parliaments in an effort to obtain subsidies to pay, first for the war with Spain, and then for that against both France and Spain. Because of inflation, the value of each subsidy granted by parliament had been declining since the reign of Elizabeth. Collection was organized by the Justices of the Peace, and they let the majority of the gentry underassess their lands and income according to old outdated values recorded in the local records. Many new names were never even added to the subsidy rolls. In the latter part of Elizabeth's reign Lord North told Burghley that many men were actually worth, "20 times, some 30, and some much more" than what they were rated at. Even given these problems subsidies in these years, were still worth as much as 140,000 pounds each, although smaller sums were more normal. By 1628 only 55,000 pounds per subsidy was being collected.[1] The infrequent intervention of James I in local government had allowed the process of underassessment to grow rapidly during his rule.

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[1] Conrad Russell, "Parliament and the King's Finances," in C. Russell (ed.), Origins of the English Civil War, (London, 1973).pp. 96-98; F.C. Dietz, English Public Finance 1558-1641, (London, 1932), pp. 53-55, 384-385, 386-390; Anthony Fletcher, A County Community in Peace and War, (London, 1975), pp. 202-205; Clive Holmes, Lincolnshire, (Lincoln, 1980), pp. 100-102. For a contemporary account of how a subsidy was assessed and collected see the Farming and Account Books of Henry Best, Surtees Society, 33 (1857), pp. 86-89. For a discussion of inflation, see Y.S. Brenner, "The Inflation of Prices in England 1551-1650", Economic History Review, 2nd series, xv. (1952), p. 270.

This meant that both James, in his latter years, and Charles had to ask for more subsidies in each parliament to obtain the same revenue Elizabeth might have received from one or two subsidies. The commons reacted by suggesting that the crown was asking for much more money than it actually needed.[2] Members blamed the increase on governmental inefficiency and corruption, not rising expenditure or their own parsimony, and this created conflict between the king and his parliaments which only added to the problems arising from other grievances that came before the commons.[3] Throughout the first three decades of the Seventeenth-century concern was repeatedly raised in parliament about the fiscal activity of the government and its effect on both individuals and the economy. By the time Charles ascended the throne in 1625 these problems were becoming increasingly contentious. The war with Spain under the direction of the Duke of Buckingham was expensive and poorly planned. England's military effort failed disastrously. Antipathy to the Duke, who was already unpopular because of his supreme position, and his monopoly on patronage, grew and the competence and policy of the central administration came into question.[4] But Charles was impatient, and he chose not to deal with the very difficult problems which faced his government. Buckingham's influence remained paramount, until the Duke was assassinated in 1628, and instead of considering more realistic fiscal and administrative reform, Charles remained absorbed in military affairs. His intellect was unimpressive, and he was lazy when confronted with detail: he preferred foreign affairs, which excited him, and most of his personal energy as ruler was expended in this area. Because of this, he was always impatient for money from his parliaments in order to get on with business. Military failure made Charles even more anxious for money to redress the deficiencies in his army, but M.P.s quite rightly suspected that the problems were more than financial, and they became recalcitrant about voting taxation. When the session of 1625 came to an end only two subsidies worth 127,000 pounds had been granted, and tonnage and poundage, normally voted to a new king for life, was only voted for one year.[5] This was not nearly enough to pay off the debt incurred by the war and in 1626 Charles resorted to a forced loan. Forced loans were an old established practice, whereby the monarch, out of parliament, could ask for an interest free loan, often not repaid, to be rated on the whole country. They were considered a gift and not one of the King's prerogative rights. In 1626 the forced loan met with principal resistance from a few, and a general reluctance to pay from many others because it came so soon on the heels of the acrimonious end to the last session of parliament.[6] Charles was desperate, and he decided to enforce the loan without any legal authority to do so. He imprisoned 70 gentlemen for refusing to pay, and thereby made the loan an important constitutional issue.[7] This led to the Five Knights Case and eventually the Petition of Right which claimed that the Commissions empowered to enforce what was essentially a gift, were illegal. The petition requested that:

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[2] Russell, "Kings Finances," p. 103.

[3] Christopher Hill, The Century of Revolution (New York; 1980), pp. 21-91; J.P. Kenyon, Stuart England, (Harmondsworth, 1978), pp. 63-106.

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[4] Roger Lockyer, Buckingham, (London, 1981), chs.8-9.

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[5] Dietz, Public Finance, pp. 225-227.

[6] Penry Williams, The Tudor Regime, (Oxford, 1979), pp. 57, 61, 65, 67, 70, 74-75, 79, 348, 395, 494-405, 413.

[7] Jones, Politics and the Bench, pp. 70-73; Christopher Hill, "Parliament and People in Seventeenth-Century England," Past and Present 92 (1981), pp. 115-118.

> ...no man hereafter be compelled to make or yield any gift, loans, benevolence, tax, or such like charge, without common consent by an act of parliament.[8]

With the failure of the session of 1629, Charles took the advice of his new treasurer Richard Weston, the Earl of Portland, and decided to raise money on his own.[9] Charles' decision to live without parliament was nothing unusual. Tudor parliaments were bodies called when the sovereign needed extraordinary revenue or important legislation passed, and were not part of the normal rule by council developed under Henry VIII.[10] Charles and Portland ended England's wars - and with them the immediate need for money - and proceeded to set the government's financial house in order from within the privy council. This was the standard Sixteenth-century method of governing. What was unusual was the legacy of opposition generated in the parliaments of the 1620s, and Charles inability to deal with it in any other way than by ignoring it. As a result, dissatisfaction did not end with the last session of parliament. The special financial schemes of the 1630s were designed to keep the government solvent without recourse to parliament, but increased impositions, the retention of tonnage and poundage, monopolies, forest laws, distraint of knighthood, and finally ship money, were no more popular than the forced loan. The activities of government ministers were still suspect; especially their efforts to come up with and justify these new ways. Also, Laud's religious innovations soon caused dissent. The activities of the government were, however, tolerated for the greater part of the decade. If discontent and unhappiness existed, few had any immediate desire to challenge the government outside parliament. Even among St. John and his friends no vocal opposition was made until Charles began to levy ship money.

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[8] S.R. Gardiner (ed.), The Constitutional Documents of the English Revolution 1625-1660, (Oxford, 1906), p. 69.

[9] Dietz, Public Finance, p. 256.

[10] See Geoffrey Elton, England Under the Tudors (London, 1974), Ch. 13.

Charles' interest in foreign policy continued into the 1630s, and if anything grew during this decade. In 1631 he had Francis Cottington, who was in Spain as ambassador extraordinary to conclude peace between the two countries, sign a secret treaty with Spain. It obliged both countries to become allies at some future date to invade, conquer, and divide the Netherlands.[11] Charles' purpose was strategic. Following Elizabeth's policy of not allowing any continental power to dominate the channel ports he planned to gain a portion of the coastline for England, while keeping France and Spain balanced against each other. The problem with this fanciful plan was that it ignored the religious aspect of the conflict. Most of Charles' subjects, even if they resented Dutch sailors, saw the conflict in a millenarian sense. They feared that the victory of Catholicism in Europe would spell the doom of their "proper" godly belief, as well as freedom and national determination. It would be a victory of the devil. Because of this Charles was forced to keep his planned invasion secret, even from most of his council.[12] An alliance to defeat a protestant power when violent campaigns were being waged for the control of Germany would have been incredibly unpopular, and it is fortunate for Charles that this typically ill-thought out scheme was never brought to fruition.

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[11] Martin Havran, Caroline Courtier (Columbia, 1973), pp. 92, 94-97, 101-103; Gardiner, History, vol. VII, p. 356.

Ship money, although other reasons were given, was raised to build and pay for the navy which would be capable of carrying out such a plan. Although Charles was not at war he was actively planning for one, and by levying ship money he hoped to avoid another troublesome parliament which would not grant him enough money. But the building of this new fleet ate up even more cash than ship money brought in, and because of corruption in the naval administration much of the money was wasted. Apart from a few show-pieces like the Sovereign of the Seas, Charles' ship money fleets consisted of a motley collection of old and ill-built ships which never saw action.[13] Their only accomplishment was to keep the large French fleet out of the channel.[14]

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[12] Ibid., VII, p. 356 and G.E. Aylmer, The King's Servants, (London, 1974),pp. 357-358.

In 1634, Charles based his levies on past practice. Elizabeth had levied ship money on numerous occasions, and James had done so in 1617 and 1619. In these cases the mayors, aldermen, and other chief officers of the port towns were asked to supply and outfit ships for a limited length of service for the crown. In the medieval period the monarch had been required to repay his subjects for what was considered to be only a loan, and parliaments had petitioned kings for money owed to them on this account. Under the Tudors, the practice of repayment faded away and the right to levy ships was claimed as part of the royal prerogative. Increasingly, towards the end of Elizabeth's reign the deputy lieutenants of counties adjacent to the ports were required to assess parts of their counties to help the ports because of complaints from the latter that they could not bear the burden of extraordinary maritime defence alone.[15] In many instances during these years, and also in 1617 and 1619, ports pleaded poverty and did not provide ships. Also, many who lived inland never paid.[16] Both Elizabeth and James simply lived with this disobedience but Charles was as determined to turn ship money into an efficient system of taxation as he had been to collect the forced loan.

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[13] The Naval Tracts of Sir William Monson, (ed.) M. Oppenheim, Naval Records Society 43 (1912), III, 272-276; Pauline Gregg, King Charles, (London, 1981), pp.230-234; Charles Carlton, Charles I: The Personal Monarch, (London, 1983), pp.176-179.

[14] Gardiner, History, IX, 59-69.

In 1634 only the maritime ports and adjacent areas were charged for ship money under the pretense that the money was intended to outfit a fleet to combat the problem of piracy. The rating and collection of this levy followed past practice in most ways, but there was one important innovation. The sheriffs of the coastal counties were given a hitherto unknown role in the rating of the affected areas. In many cases the charge for a single ship was spread along an entire stretch of coastline which might include a number of ports. The mayors of the ports were ordered to meet with the sheriff of their county to work out a fair division of the money needed to build a ship. If the mayors could not reach an agreement the sheriffs were to divide the rating on their own. The sheriffs were also given the authority to resolve the inevitable disputes that would arise over unfair rating. This was a small step towards the system of enforcement that would be implemented in 1635. Already the privy council was giving the the officer most responsible to the demands of the central government (the sheriff) responsibility and authority to make important decisions that he had not had before and which could affect the rights of chartered boroughs![17] There were grumblings and disputes, but the collection was generally very successful. Piracy was a grave problem which many who lived on the coast wanted to see combated, and this contributed to the success.[18] More important was the fact that the writs demanded no specific sum of money, only ships of a certain weight outfitted to certain standards. The officers of the ports were able to assess only the bare minimum needed, and once they had provided a ship there was no demand from

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[15] A.H. Lewis, A Study of Elizabethan Ship Money, (Philadelphia, 1928), pp.7-8, 19, 23-24, 40-43.

[16] *Ibid.*, pp.62-73.

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[17] CSPD 1634-1635, pp.161-162, 242-243, 282, 374, 608.

[18] Between 1625 and 1627, for instance, 230 vessels valued at over 197,000 pounds were lost together with 130 vessels of unspecified value. R. B. Redstone (ed.), The Ship Money Returns for the County of Suffolk 1634-1640, Suffolk Institute of Archeaology and Natural History (1904), pp.v-vi; For a vivid example of the violence pirates inflicted upon the English coast, see the letter printed in CSPD 1635, p.101.

London for money in arrears. This year 79,586 pounds were collected, less than half of what the government would settle for in 1635.[19]

These next levies introduced a number of innovations to increase the yield of ship money, and to ensure that all who were liable to pay did so. For the first time all the counties had to contribute towards the providing and outfitting of ships. Before, it had been argued that only those involved in trade benefited from defence of the sea, but now the writs stated that:

> ...whereas this burden of defence which toucheth all it ought to be borne of all, as by the law and custom of this realm...[20]

Here Charles was being very modern, arguing that if the state was to be responsible for defence, then the people were going to have to be made to support it. In the new writs, although piracy was still mentioned, the emphasis was now placed on England's right to sovereignty of the seas in order to justify collection.[21] To back up this claim John Selden's Mare Clausium was published.[22] Because it was impossible for the inland counties to provide their own ships, the writs, after going through the traditional preamble of asking for a ship of specified value, informed readers that the king was graciously offering to build and supply these ships for his subjects. They merely had to pay the money which the crown estimated a ship would cost and deliver it to London. The council would then take care of the building and outfitting of ships.[23]

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[19] M.D. Gordon, "The Collection of Ship Money in the Reign of Charles I," Transactions of the Royal Historical Society, Third Series 4 (1910), pp.143, 155; CSPD 1634-1635, p.295.

[20] C.G. Bonsey and J.G. Jenkins (eds.) Ship Money Papers and Richard Grenville's Notebook, Buckinghamshire Record Society 13 (1965), p.1.

To carry out this process the sheriffs of each county were ordered to administer the rating and collection of the levies as the king's ministers. They were given responsibility to rate everyone fairly, but they also had to ensure that the total amount asked for by the council was collected. To enable them to enforce payment the writs gave the sheriffs the authority to distrain the goods of refusers to the value of the amount owed, or imprison them if necessary.[24] In this way Charles aimed to eliminate the problems which had plagued the collection of subsidies by deciding on the amount to be collected beforehand, and then ensuring payment by word of writ to be enforced by the sheriff with his power of posse comitatas. This put a tremendous burden on the sheriffs because it was impossible in practice to rate everyone fairly working from a given arbitrary figure. Unfair ratings created a barrage of complaints and there were numerous problems with dishonest sheriffs, undersheriffs, and constables. As a result many people refused to pay, complaining that they were rated unfairly in comparison with their neighbors or other areas of the county. Frustrated sheriffs called to the council for help and Secretary Nicholas was kept busy sorting out conflicts.[25]

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[21] Idem.

[22] Gardiner, History, VIII, 202-208.

[23] Ship Money Papers, p.2.

[24] Idem.

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[25] For descriptions of the administrative problems in various counties see, T.G. Barnes, Somerset 1625-1640, (Cambridge Mass., 1961), ch.8; Fletcher, County Community, ch.10; Holmes, Lincolnshire, ch.8; Elaine Marcotte, "Shrieval Administration of Ship Money in Cheshire, 1637: Limitations of Early Stuart Governance," The John Rylands University Library Bulletin 58 (1975-1976), pp.137-172; Peter Lake, "The collection of ship money during the sixteen-thirties: a case study of relations between central and local governments," Northern History 17 (1981), pp.44-71. For examples of letters written by people complaining of their rates, and sheriffs complainng about their difficulties see, Ship Money Papers, pp.xiv, 3, 8, 9, 24-25, 33, 34-35, 38, 43, 88; F.G. and Margaret Emmison, (eds.), The Ship Money Papers of Henry Chester and Sir William Boteler, Bedfordshire Historical Record Society 18 (1936), pp.56-58, 60, 62-63; CSPD 1635-1636, pp.344-345, 1639-1640, pp.559-560; The Victoria History of the Counties of England, Dorset, II, 146, Essex, II, 229, Kent, III, 307, Berkshire, II, 147-148.

Most authors recently discussing ship money have emphasized the fact that so much opposition had its roots in administrative procedure.[26] While this is undoubtedly true, it does not mean that the opposition was necessarily non-constitutional -an inference which has been drawn from the first conclusion. Administration and the constitution were linked inexorably in numerous ways. What many found most obnoxious about the administration of ship money was the power it gave the sheriffs and their under-officials as agents of the central government. The process of county administration by the Justices of the Peace was circumvented to apply royal authority as forcefully as possible. Legislation and administrative orders had always come from London -either from parliament or the privy council- but the machinery of enforcement was in the hands of the local gentry and there was a limit to the degree which the council would push to have its orders carried out. The sheriffs' ties were also with the local gentry, but because they were non-judicial officers of the crown, -its servants in a real sense- responsible for disseminating the crown's orders and certain police functions, they could be threatened to enforce collection. Hence, those who were rated unfairly and many sheriffs who suffered under the onerous duty of making refusers pay, or from being censured by the council, blamed the government for changing the old accustomed method of governing the counties in such a drastic fashion and enforcing it so stringently.

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[26] See especially, Marcotte, "Shrieval Administration"; Barnes, Somerset, pp.209ff; John Morrill, Chesire 1630-1660: County Government and Society During the English Revolution, (Oxford, 1974), pp.28-30; John Morrill, Revolt of the Provinces, (London, 1976), pp.26-30; Kevin Sharpe, "The Personal Rule of Charles I," in Howard Tomlinson (ed.) Before the English Civil War, (London, 1983), pp.70-75.

All of the problems with rating were created by Charles' attempt to make the administration of taxation more efficient. But this effort, and perhaps Charles' imagination, was limited by his desire to prove that what he was doing was not unconstitutional. He never aimed to create a centralized absolutist bureaucracy to force taxes out of his subjects, only to make the largely de-centralized system of county administration work for the crown -not for the nobility and gentry. His attempt to do this with the collection of ship money was grounded on the assertion of his own authority as king. He claimed ship money as a prerogative right and made it a punishable offence not to pay. In the end, the whole success of the scheme depended on how far peoples' traditional respect for the the authority of the monarchy and their acceptance of the need for central government would outlast their dissatisfaction at being ordered to pay large amounts of money. Once opposition solidified after the outbreak of the Scottish rebellion, the king's authority was no longer obeyed. The suprema potestas held to be inherent in the king by both his subjects and his laws was now an empty cathedral. His power had evaporated. As much as he might try, Charles could not make the administration work to his advantage when only a minority of people were willing to pay. He had no army or police to enforce his effort to modernize state finance and it eventually suffered a spectacular collapse. It is fair to say that Charles was in part forced into this situation because of his subjects' previous unwillingness to pay the subsidies that they had granted, but this did not alter the fact that many, people probably most, wanted to retain parliamentary control over taxation regardless of the consequences.

Charles was not blind to this feeling, and from the earliest years of collection he anticipated opposition to his scheme. He was at least astute enough to realize that he was going to have to prove that ship levies were indeed a part of his traditional prerogative. He was as keenly aware of the importance of the law as were his subjects, and the novelties of ship money collection were carefully disguised as extensions of past practice. The two men most responsible for planning the scheme were Attorney-General William Noye and Sir John Banks. The Keeper of the

Records, Sir John Burough searched out precedents for them to demonstrate that ship money had been collected in the past.[27] Under their plan each county was asked for a single ship to cover up the novelty of centralized collection.

To propagate the notion that the King was using his prerogative as he should -within the word of the law- Lord Keeper Coventry urged the judges to justify ship money while on assizes in 1635. In this year and again in 1637, after opposition had grown, Charles, in an unusual move, solicited the judges for an opinion on the legality of ship money in the hope that an affirmative answer would speed up payment. After some prodding by John Finch, Chief Justice of the Court of Common Pleas, the judges twice gave the crown the favorable judgement desired.[28] But Charles' attempt to justify his actions by force of law had an impact exactly opposite to that he hoped for, and was a major blunder. Although James had called the judges men of great understanding and compared their learning to the heavy "better music" of a viol, their opinions on such an important matter, made in such an unusual manner, indicated that their intonation was faulty. It appeared that the king was using his judges, not parliament, to make new law and this practice raised the issue beyond the question of taxation to the very fulcrum of the constitution -the authority of law.[29]

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[27] CSPD 1634-1635, p.259; Jones, "Noye," pp.210-211; G. Verne Bense, "Sir John Banks," DNB, I, 1041.

[28] Jones, Politics and the Bench, pp.125-126; Gardiner, History, VIII, 94-95; Whitelocke, Memorials, I, 67, 71; Rushworth, II-I, 297.

It is difficult to gauge the precise amount of constitutional opposition to ship money throughout the country because of a lack of evidence, but there was a great deal. Had opposition been only administrative then it would seem likely that the success of collection should have increased every year as sheriffs worked to iron out ratings problems. But, in fact, the opposite happened. In 1634 only 1.3% went uncollected; in 1635 -2%; and in 1636 -3.5%. For 1637 this had risen to 9%, and by the summer of 1638, immediately after the decision on Hampden's case, fully one third was never collected. In 1639 the majority of the country simply stopped paying the tax and 80% of the 214,400 pounds asked for by the king was never seen by the sheriffs before collection was abolished.[30] Also, every year increasing amounts of the levies were collected in arrears.

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[29] Jones, Politics and the Bench, p.127; Hastings Journal of 1621, (ed.) Lady de Villiers, Camden Miscellany 20 (1953), p.29.

[30] Gordon, "Collection of Ship Money," pp.143-145.

Roger Twysden noted that in his county, Kent, many men were initially willing to pay ship money because they were convinced that:

> ...this way would not last to raise money by. They did observe that new laws did rather loose their own credit than abolish that which time, use, and approbation had contributed to old. That the introducing a new way in any business had no greater enemy than the many inconveniences might arise by putting it in execution.[31]

They were well aware that ship money was a new law but hoped that the King would abandon his plans once faced with the trouble that would be created. But as it became clear that the King was intent on pressing forward with collection, people people began to fear the extent to which he was willing to use his authority to make ship money work without going to parliament. Increasingly, they began to suspect that the King was trying to override their traditional right to vote extraordinary supply in parliament by filling his treasury with ship money.

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[31] "Roger Twysden's Notebook," -A selection edited by Kenneth Fincham and printed together with his article "The Judges Decision on Ship Money in Kent," Bulletin of the Institute of Historical Rcsearch, 136 (1984), p.235.

Twysden was at the Maidstone assizes on February 22, 1637 when Judge Weston related the recent affirmation by the judges of ship money's legality, which had been recorded in the records of Star Chamber, King's Bench, and Common Pleas, and noted:

> ...the audience which before but harkened with ordinary attention did then ...listen with great diligence, and after the declaration made I did, in my concept, see a kind of dejection in their very looks...[32]

After the assizes, the discussion indicated that people were already taking a stance on the constitutionality of ship money. Some maintained with the king that he had "full right" to impose ship money, and that the kingdom "ought not to be lost for want of money." They acknowledged that it was a great grace and favor that he should go to his judges and not deny anyone his lawful trial.[33] Already some of the feeling that was to be expressed five years later at the same assizes was being tossed about.[34] But at this point, Twysden's recollections indicate that many more men opposed ship money. They argued that:

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[32] Ibid., p.232.

[33] Idem.

[34] T.P.S. Woods, Prelude to Civil War, Mr. Justice Malet and the Kentish Petitions, (Wilton, 1980), chs.4-5; B. Schofield (ed.), Knyvett Letters, (London, 1949), pp.31-33.

> ...in a case of this great weight, the greatest was ever heard at a common bar in England, that a judgement that not may but doth touch every man in so high a point every man ought to be heard and the reasons of every one weighed which could not be but in parliament.[35]

Fortescue was cited to show that the King "had not an absolute power," and also the opinions of Coke, Fleming, and others to the effect that the King had no prerogative but what the law gave him.[36] Since the Kingdom was not at war, the King had no right to break the law by introducing novel practices under the cloak of his prerogative. There was a general realization that, "this way of compelling men ...which was compulsory" was far different from the previous practice of "doing it by the letter (that being a kind of intreaty)." A number of histories were quoted to demonstrate the ill effects of increased taxation in France and Florence, and impositions were questioned. The gentry in Kent were certainly not ignorant about the wider world, and although their reaction is representative of only one county, there must have been similar discussions all over England.[37]

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[35] "Twysden's Notebook," pp.232-233.

[36] *Ibid*., p.233.

There is no evidence to show what St. John's initial reaction to ship money was, but there is much which shows that his associates opposed it very rapidly. In Essex, Warwick, organized opposition even though he was Lord Lieutenant of the county. In 1634 the first men to be called before the council board for resistance were two of his officers.[38] In July of 1636 the sheriff wrote that there was not a penny paid that was not forced. Later he prepared a list of people from whom he had to distrain, which included the Earl himself and both St. John's uncle, Sir Thomas Barrington, and his father-in-law, Sir William Masham. Payment was notably behind in Sir Thomas' parish of Hatfield Broad Oak.[39]

In January of 1637 Warwick appeared before the council to protest the tax. The Venetian Ambassador reported:

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[37] _Ibid_., pp.233-234.

[38] V.A. Rowe, "Warwick and the payment of Ship Money in Essex," _Transactions of the Essex Archeaological Society_, Third Series 1 (1962), p.160.

[39] _CSPD_ 1636-1637, pp.57, 197.

> The Earl of Warwick, whose courage has always been ready for the greatest enterprises, has with his followers... taken up the cudgels, so they say, in defence of law and reason. He made no bones of telling the king frankly that his tenants or farmers... were all old and accustomed to the mild rule of Queen Elizabeth and King James.... They would consider their fault too grave if they died under the stigma of having, at the end of their lives, signed away the liberties of the realm...[40]

Warwick went on to explain that he was quite willing to give his money or even his life if an anti-Spanish foreign policy could be arrived at within parliament. The king made no reply except to say that he hoped Warwick would be prompt to urge his county to pay.

Warwick was only one of a number of men who were organizing to prepare some sort of resistance against ship money. Again the Venetian Ambassador reported about these goings-on:

> ...his majesty's firmly rooted determination to gain independent authority over his people always constitutes an obstacle to all the expedients which circumstances suggest, as it seems that he cannot suffer the mention of a parliament much less its assembling...
>
> ...we see this grave matter approaching greater dangers, with little hope of any remedy that may not prove very unpleasant and bitter.
>
> It now seems that many of the leading men of the realm are determined to make a final effort to bring

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[40] CSPVen 1636-1639, p.124.

> the forms of government back to their former state. They hold secret meetings ...[and] have decided to draw up a paper which many will sign, to be handed to his majesty in the name of all, with an open request for the convocation of parliament.[41]

Saye and Sele was involved in these meetings. Like Warwick, he had organized resistance since 1635 near Banbury, Oxfordshire the seat of most of his lands.[42] Many of the participants in these meetings were members of the Providence Island Company, and undoubtedly St. John was involved.[43] They actually drew up a petition, but it was never presented to the king. The petition stated that ship money was contrary to the laws and liberties of the realm and that the king's poor subjects "groan and languish" under "this intolerable burden and grievance." Numerous statutes were cited to show why past kings had to go to parliament to obtain funds for defence, including chapter 29 of Magna Carta and the statute de Tallagio non concendendo of 25 Ed III.[44]

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[41] Ibid., pp.124-125.

[42] CSPD 1635, pp.475; CSPD 1636-1637, pp.121, 122, 134, 194, 210, 438-439; CSPD 1637, pp.155, 209, 382-383, 436, 440, 448; Nelson Bard, "The Ship Money Case of William Fiennes, Viscount Saye and Sele," Bulletin of the Institute of Historical Research 122 (1977), pp.178-180.

[43] Bard, "Saye and Sele,"p.180; Newton, Colonizing Activities, pp.241-244.

[44] Rushworth, II-I, 359-360.

This petition was never presented because Saye decided instead to force the issue in the courts. In February of 1637 he sued a constable and the sheriff of Lincolnshire upon an action of Trover and conversion for taking two of his oxen. The sheriff and constable pleaded authority of the King's writ, and Saye countered by claiming it was insufficient warrant. Then the sheriff and Saye together attempted to have the case heard in King's Bench rather than at the assizes because of its great consequence. The King's counsel was called upon and he rejected the combination between Saye and the sheriff on the grounds that the latter had pleaded "not guilty," which was an unacceptable plea on an action of Trover. The case was permitted to be heard before King's Bench, but it was delayed to the next term. Although the sheriff had been sued by Saye, he appears to have been working with him to bring the case before King's Bench. Here the weakness of the administration is demonstrated. The King could count on only a few of his sheriffs to be fully loyal to him in a business they had more reason to oppose than anyone else because of the enormous problems of collection.[45]

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[45] Court and Times, II, 278; Bard, "Saye and Sele," p.180.

At about the same time there was another case of a similar nature in Shropshire that was almost brought before William Jones, a judge of the King's Bench, on circuit but at the last moment an excuse was found to prevent a juror from sitting and the trial was moved to Westminster Hall.[46] It was immediately after these challenges, but before they could come to trial, that the King wrote his letter to the judges again soliciting their opinions after being advised to do so by Finch.[47] Undoubtedly this was an attempt to prevent a large number of cases from coming to court before and initial test case could be tried.

By May of 1637 St. John was definitely working for Saye, who had originally entrusted the case to his family solicitor.[48] St. John might already have been working on the subject before this for Warwick, or perhaps simply in general as a member of the Providence Island group, for he was soon once again in trouble with the council. A minor sensation was created when Sir William Beacher, the clerk of the council was given a warrant to search for papers in St. John's study. Because there were so many they were all seized and brought away by a porter. Apparently the reason for this action was a complaint made to the board that St. John had been responsible for drawing up Henry Burton's answer to the charge that he had published seditious sermons against the bishops, which the council considered "so untrue and so scandalous as that lawyer deserved a sever punishment that had his hand in it." Although no papers were found concerning Burton's answer there were notes about the ship writs and some "choice manuscripts" concerning "forest bounds and laws." St. John took great care to ensure that the council did not go through his ship money notes, which were already quit extensive. He bundled them all together, and after proving to Beacher that there was nothing else in the bundle, affixed six seals to it. The council returned the package unopened three days later.[49]

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[46] Court and Times, II, 275-276.

[47] Ibid., II, 278-279; Whitelocke, Memorials, I, 71-72.

[48] Bard, "Saye and Sele," p.182.

Although the ostensible reason for seizing St. John's papers had only been to check whether he had prepared Burton's defence, the council probably also wanted to see what kind of opposition was being prepared against its policies. The action suggests that St. John had a reputation as a person who thought that the government was behaving illegally, and the fact that papers were found on forest laws and ship money bears this out.

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[49] CSPD 1637, pp.237, 252; S.R. Gardiner, Documents Relating to the Proceedings Against William Prynne in 1634 and 1637, Camden Society, New Series 18 (1877), pp.77-78, 82-83.

St. John, however, never defended Saye because his case never came to court. Instead the government moved to bring the issue before the courts on its own terms. The first step in this process was the exhibition of information in Star Chamber charging Saye and Sele with depopulation.[50] With Saye under the threat of this court proceedings were initiated against John Hampden, a wealthy gentleman of Buckinghamshire. On May 5 the council, through a writ of mittimas had the Barons of the Exchequer issue the sheriff a writ of sciri facias to charge Hampden with cause to show why he should not have to pay the now famous 20s. which had been levied on some lands of his at Stoke Mandeville in 1635.[51] Hampden was related to the Barrington clan through his mother, and had been a close friend of Sir John Eliot and been involved in some of Saye's colonization projects.[52] He sat in the all the parliaments of the 1620s and was undoubtedly associated with those who led the opposition to government policy in 1628-1629.[53] In 1636 Buckinghamshire was the county most behind in payment, with almost one quarter of the money uncollected. The council had already applied pressure on Peter Temple, sheriff for that year, to make him more diligent in the collection of arrears to the extent that he wrote to his mother: "My life is nothing but toil, and hath been for many years."[54]

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[50] CSPD 1637, p.246.

[51] Lord Nugent, Some Memorials of John Hampden, (London, 1832), I, p.239; The Autobiography of John Bramston, (ed.) T.W. Bramston, Camden Society 32 (1845). p.69.

[52] Barrington Letters, p.2; C.H. Firth, "John Hampden," DNB, XVIII, 1138.

The obvious reason why the council picked on Hampden; to make him an example in the county, but his association with Saye and the others must have been a more important factor. A charge of depopulation was not serious enough to deter the Earl from his own suit, but with action being taken against Hampden there was little point in going through with two trials. All that had to be done was for Saye's lawyers to defend a new client.

By becoming the prosecution in the case against Hampden the crown was able to keep ship money out of King's

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[53] Ibid., p.1139; Hulme, The Life of Sir John Eliot, pp.340-342, 348-351, 355-357, 359-365.

[54] Ship Money Papers, pp.44, 45, 67-68, 84-85, 89-90; Gordon, "Collection of Ship Money," p.156; Nugent, Memorials of John Hampden, I, p.233.

Bench. This was undoubtedly the most important reason why the council chose to avoid Saye's case. True, Saye was a peer, and a well known one, but it is difficult to see why the crown would have feared a case involving the Earl. His two oxen were no more the issue than Hampden's 20s. The issue was the sufficiency of the King's writ and a judgement in either case would have had the same effect.

For some time before this it had been the practice, on occasion, to refer important and complicated matters of debate to all of the judges sitting together in the Exchequer Chamber. A difficult case in any one of the central courts could be adjourned to the Exchequer Chamber and the decision reached there would be pronounced in the court in which the case originated. The importance of this procedure was that, excepting parliament, it appeared to laymen as the most powerful expression of English law in action.[55] The attraction it would have held for Charles is obvious. He realized that all of the judges together would not go against him, and he wanted to make the decision on the legality of ship money as important and pressing as possible -not in the least because his critics were demanding it be judged in parliament. A decision in

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[55] Jones, Politics and the Bench, pp.49-51.

Exchequer Chamber also had the advantage of employing a majority opinion. A minority of the judges might not agree with a judgement, but they would endorse it all the same. Generally, this led to the idea that if a decision could bind all of the the judges in one case then it was undoubtedly important enough to be a binding precedent in subsequent cases.[56]

Compared to the advantages of an Exchequer Chamber hearing, there were two disadvantages which told against having the case heard before King's Bench. The first was that parliament was considered a court of appeal on writs of error out of King's Bench. Since the legality of ship money was tenuous to say the least, had it been brought before King's Bench, counsel for the defence would have been able immediately to argue that such a difficult case should be heard before parliament.[57] Second, Sir John Bramston was Chief Justice of the King's Bench, and he was one of the judges whom Finch had to bully to make the declaration in February 1637. Bramston was of the opinion that the King could only impose such a charge in case of necessity, and only during the time and continuance of that necessity.[58] On these grounds he subsequently decided for Hampden, and had the case come before his court he would have had much more influence -with possibly disastrous results from the point of view of the crown.[59]

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[56] _Ibid_., p.50.

[57] Coke, _The Fourth Part of the Institutes of the Laws of England_, (London, 1648), pp.21-23.

The case could still have come before King's Bench and then have been moved to Exchequer Chamber, but it was more advantageous to proceed through the Exchequer. The Exchequer was traditionally the court where cases involving the King's revenue were tried, whereas King's Bench was a court for pleas of the crown.[60] It was to the crown's advantage to focus as much attention as possible on the propriety of ship money as a device for collecting revenue rather than an issue involving parliament and the rights of liberty and property. Undoubtedly, all of the problems and questions that were raised by Eliot's trial were considered by the council, and they moved to avoid a repetition of those embarrassments and sensitive arguments by keeping clear of King's Bench.

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[58] The Autobiography of Sir John Brampston, p.74.

[59] State Trials, III, 1243-1251.

[60] Jones, Politics and the Bench, p.29; F.W. Maitland, Constitutional History of England, (Cambridge, 1931), pp.134-135.

The case finally came before the court in November of 1637 with St. John and Robert Holborne as Hampden's counsel.[61] By this time the case had become a cause celebre, and its proceedings were eagerly awaited throughout the country. Thomas Knyvett described the commotion it caused:

> The business now talked on in town is all about the question of the ship money.... St. John hath already argued for the subject very bold[ly] and bravely. Yesterday was the first on the King's part. I cannot relate any particulars because I heard it not. Although I was up by the peep of the day to that purpose, I was so far from getting into the room that I could not get near the door by 2 or 3 yards, the crowd was so great.[62]

Knyvett was quite right, St. John's arguement was brave in a number of ways. He shattered the crown's hope to keep discussion confined to matters of revenue by proceeding to argue that ship money was illegal because it violated the subject's right to property and liberty. Ship Money, he claimed, was a tax that could only be voted by parliament. Although care must always be taken with arguments given by a lawyer in a case, it seems reasonable, in this instance, to assume that St. John was presenting his own opinions and not just acting as an advocate for the views of his client. His long association with Saye and Warwick and his latter opposition to the tax in the Short and Long Parliaments leave little doubt that this was so.

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[61] Whitelocke stated that even before Saye decided to prosecute his case Hampden often advised in "this great business" with Holborne, St. John, and himself. Thus it must have been a simple matter for St. John to take it up. Whitelocke, Memorials, I, 71.

[62] Knyvett Letters, p.91.

St. John was the first to argue after Attorney-General Banks explained how the case came to court. He opened his defence by stating that the writ was immediately void simply on the grounds that it did not indicate the use to which the ships were to be put, because command without cause shown was insufficient in law. But he left this as stated and moved on to greater issues. he did not confine himself to an examination of past ship levies, nor did he question the difficulty of inland counties being able to outfit ships according to the words of the writs. He was quite willing to agree with the king's innovative conclusion that:

> All have benefit by defence of the realm, and therefore by law the charge ought to be born by all.[63]

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[63] State Trials, III, 858.

The law, he claimed, protected the whole of the body politic from the violence and will of its enemies.[64] His point was to equate ship money with subsides and tonnage and poundage, which were the old means whereby the cost of defence was born by all. Hence, if ship money was the equivalent of one of these charges then it could not be claimed as one of the King's prerogative revenues ~~es~~tablished for his own personal use:

> ...the charge must be born by all, so it must be approved by all.[65]

In other words, ship money was a tax which had to be voted in parliament.

In defining his case for the right of parliament to grant extraordinary taxation, St. John presented a coherent theory of kingship and prerogative rights. He began by stating there was no question that the law had "entrusted his royal majesty" with the care of defence, but this was not a power possessed or invested in the king, it was a duty to the commonwealth:

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[64] St. John backed up this claim with a statue concerning sewers, arguing by analogy that all were responsible for repair of the banks to prevent inundation. This was only one of a number of instances where St. John drew upon laws used to regulate common responsibility within the county community to illuminate matters of state. Ship money, he would later claim turned such laws against the good of the subject by using the argument of common security to bolster the power of the central government to dangerous extremes. It is also one of the occasions where he demonstrated a large degree of knowledge about sewers gained while working on Bedford's drainage scheme. State Trials, III, 859-860.

[65] *Ibid.*, III, 878.

> Neither hath the law invested the crown with this height of sovereignty only as a *honorarium*, for the greater splendor of it, but likewise as a duty of the crown ...for the good and safety of the realm.... By the law, the king is *pater-familias*, which by the law of economics is, not only to keep peace at home, but to protect his wife and children, and whole family from abroad.[66]

It was the king's duty, not his right, to discover when the realm was in danger because he formulated foreign policy and thus had the means to do so. He was also responsible for organizing the initial preparations for defence.[67]

Having admitted that it was in the king's power to decide when the nation should go to war, St. John went on to argue that the question here was *de modo*: by what means this power should be employed, for the preparations and conduct of the war would inevitably involve the king's subjects. He stated that the king's power must operate through the "forms and rules" of the law:

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[66] *Ibid*., III,859- 860.

[67] *Ibid*., III, 860-861.

> In his majesty there is a twofold power, voluntas or potestas interna or naturalis, and externa or legalis.... the supreme power not working per media, it remains still in himself as' voluntus Regis interna,' and operates not to the good and relief of the subject that standeth in need.... His majesty is the fountain of justice; and though all justice which is done within the realm flows from this fountain, yet it must run in certain and known channels.[68]

The king like everyone else in the realm, was tied to the rule of law. But, the law had to be interpreted, and the king could not do this alone. He needed the the assistance of either his judges or parliament. The king could not, "out of parliament alter the old laws, or make new, or make any naturalizations or legitimations..."[69] Parliament was the highest court in the land because:

> ...the whole kingdom is representatively there: and ...the whole kingdom have access thither in all things that concern them, other courts affording relief but in special cases; and thirdly in respect that the whole kingdom is interested in, and receives benefit by the laws and things there passed...[70]

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[68] Ibid., III, 861.

[69] Ibid., III, 862.

[70] Idem.

The implication of this was that all new laws had to originate with the consent of all whom they would affect. This was in keeping with St, John's view that the law was oriented towards the community, and it cast considerable doubt on the King's ability to create innovative methods of taxation without parliament.

St. John had to concede, however, that parliament was Concilium Regne. The King was still the head of the whole body of the realm and it was his responsibility to call parliament, though this should still be done in his role as a father, for the common good.[71] The King also had the job of enforcing legislation, but neither of these points altered the limits of his legislative power. The words of the law might state things to be done by the King, or by the King with the consent of the lords and commons, but this was only a convention; parliament still made the law:

> ...what was done in parliament by the law phrase and dialect, is said to be done by the King...[72]

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[71] Ibid., III, 860, 862, 901.

[72] Ibid., III, 863.

St. John did not accept the fiction that ship money was an old established procedure. It was an innovation devised by the king without parliament and hence illegal.

St. John also argued that, in addition to circumventing proper legislative procedure, ship money violated the subjects' right to his or her property. He began with a general discussion of land tenure to show, in the past, services for defence had been demanded by the king as a part of grants of tenure, arguing, interestingly, that this was the reason for all tenures being held of the crown, because the land was never actually owned by the crown. It had always been in the hands of private individuals.[73] He went on to discuss the development and decline of knight's service, stating that this had been replaced by "the profits of wards, marriages, releases, licences, forfeitures for alienations, and *primer seisin*."[74] For the defence of the sea, certain towns, especially the Cinque Ports, were required by their charters to provide the king with ships for defence in time of danger.[75] Hence, the king was already provided by the law with ordinary sources of revenue for defence, and St. John was insistent that such fiscal feudalism could only be used for defence:

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[73] *Ibid*., III, 860, 864-868.

[74] *Ibid*., III, 869.

[75] *Ibid*., III, 868-871.

> That which I will insist upon, will be to prove, that the things coming to the crown by this prerogative way, are to be employed for the defence, and other public affairs of the realm.
>
> In his majesty, there is a double capacity, natural and politic. All his prerogatives are jure coronae, and of all such things he is seised jure coronae; and therefore, as in other corporations, such things are patrimonia et bona publica, to be employed for the common good, so likewise by the same reason here. The reason why the King hath treasure trove ...[is] to defend the kingdom.[76]

Customs and tonnage and poundage came to be granted to the King for life so he would have a ready supply of money to defend the seas, but these were granted, they were not rights.[77]

If these "ordinary settled and known ways by the law" were insufficient, then the King had to turn to parliament for grants of revenue. The relations of meum and tuum between the crown and the subject were defined by law and to violate them was illegal. Property was the subject's and it was his right to have the commons judge the amount to be given according to the nature of the need:

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[76] Ibid., III, 873.

[77] Ibid., III, 880.

> ...the parliament, first, are best qualified and fitted to make this supply; (for some of each rank, and that through all the parts of the kingdom, being there met, his majesty having declared the danger, they best know the state of all men within the realm, and are fittest, by comparing men's estates together, to proportion the aid accordingly;) and secondly, are fittest for the preservation of that fundamental propriety which the subject hath in his lands and goods...[78]

In essence, parliament would have to make some very important decisions on foreign policy if it possessed the right to judge the danger as St. John suggested.

In the past, St. John declared somewhat ingeniously, kings had always come to parliament for revenue because:

> It is rare in a subject, and more in a prince, to ask and take that of a gift, which he may and ought to have of right.[79]

This idea was applied specifically to ship money:

> ...the law delighting in certainty, to the end that the subject might be sure of somewhat that he might call his own, hath made all those things that the king challengeth as peculiar to himself from the subject,

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[78] *Ibid.*, III, 883.

[79] *Idem.*

> either certain in themselves, or reducible to a certainty by ...some other way than by his majesty himself...[80]
>
> If his majesty, as in the writ, may without parliament lay 20s. upon the defendant's goods, I shall humbly submit it to your lordships, why by the same reason of law it might not have been 20 pounds and so ad infinitum; whereby it would have come to pass, that if the subject hath anything at all, he is not beholden to the law for it, but is left entirely in the mercy and goodness of the king.[81]

For St. John respect and trust of the monarch were not enough, the king needed to be ruled as much as the subject.

Even in the case of sudden danger he denied that the government could take freely. In such a situation it could only ask to borrow money on the promise of future repayment. The only time the king could take from the subject was in the case of:

> ...sudden and tumultuous war, which shuts the courts of justice, and brings his majesty in person into the field, and wherein property ceatheth.[82]
>
> ...for property being both introduced and maintained by human laws, all things by the law of nature being common, there are therefore some times, like the Philistines being upon Sampson, wherein these cords are

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[80] Ibid., III, 885.

[81] Ibid., III, 886.

[82] Ibid., III, 905.

> too weak to hold us. *Necessitas enim ...magnum humanae imbecillitatis patrocinium omnem legem frangit*.[83]

In such times the kings power was not justified by his position, but because "every man that that hath power in his hands" may take anothers' goods or burn his house for the safety of the kingdom.[84] But such cases were extreme, and one certainly did not exist in the 1630s when the country was at peace.[85] Therefore a parliament should have been called.

The precedents St. John used to back up these arguments are important because of the emphasis they placed on statute. If it had been a less important case, this might not be that significant, for it was generally accepted that statute was the most authoritative form of law. Whatever one might feel about the legislative function of medieval parliaments, or the role of Thomas Cromwell in changing the nature of English administration -or indeed about the real power of Henry VIII- it is undoubtedly true that the period after 1529 saw statute become omnicompetent in its authority as precedent.[86] In 1528, St. Germain had already claimed that:

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[83] *Ibid*., III, 903-904.

[84] *Ibid*., III, 903.

[85] *Ibid*., III, 904, 905-906.

> The ground of the law of England standeth in diverse statutes made by our sovereign lord the king and his progenitors and by the lords spiritual and temporal and the commons of the whole realm in diverse parliaments in such cases where the law of reason, the law of God, customs, maxims, and other grounds of the law of England seemed not to be sufficient...[87]

Thomas Smith wrote in his De Republica Anglorum that:

> The parliament abrogateth old laws, maketh new, giveth orders for things past and for things hereafter to be followed...[88]

Whatever the structure and reality of power in the Tudor state, it was increasingly accepted that new laws were constantly needed to deal with new problems and that these laws held authority if they were passed by parliament because, "every Englishman is intended to be there present."[89] Most political reforms were still devised in council and introduced into parliament, but the theory was there and many bills concerning civil matters were put forward by M.P.s to deal with the problems of local administration. Although James and Charles let their parliaments have more initiative, the theory of legislation remained the same, and however much men believed in the ancient constitution, they also believed, perhaps contradictorily, that society did change, and that new problems were a reality which had to be faced.[90]

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[86] Geoffrey Elton, Tudor Constitution, (Cambridge, 1982), pp.234-235; Elton, England Under the Tudors, pp.66-69, 168-170, 174-175, 402-403.

[87] St. Germain's Doctor and Student, (eds.) T.F.T. Pluknett and J.L. Barton, Selden Society 91 (1974), p.73.

[88] Thomas Smith De Republica Anglorum, (ed.) Mary Dewar, (Cambridge, 1982), p.78.

The novelty of St. John's argument was that he used the force of statute against the crown, whereas the crown from the beginning based its case on the fact the that the collection of ship money was an ancient practice. Not only does this cast considerable doubt on the view which sees St. John as a man with a reverence for the common law, who fought for the ancient constitution, but much more importantly it means that he had rejected the organic Tudor concept of state sovereignty. Professor Elton has demonstrated that while Tudor rule depended in the first place on a full recognition of the prince as the visible embodiment of the state (the government was the king's or queen's government), the idea of sovereignty was more complex. The Tudor body politic, and the Stuart, was vested in the idea of harmonious unity of head and members. The physical legislative embodiment of this doctrine was parliament where the monarch and all his or her subjects came together to pass new law and clarify old. Unity was the key to this idea and hence relations between the monarch and the other members of the body politic were never clearly defined.[91] This worked to the advantage of the Tudors who got away with much without having the theory seriously challenged.

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[89] Ibid., p.79. Also, see Elton's article "English Law in the Sixteenth Century," in Studies in Tudor and Stuart Politics, (Cambridge, 1983), III, 274-288.

[90] For the opinions of Lord Digby and Nathaniel Fiennes on this see, Rushworth, III-I, pp.172, 175.

This idea was still prevalent in the Stuart period although tensions were obviously developing. James I reiterated the notion of the body politic, emphasizing the role of the head in looking after the body.[92] Most of the Stuarts' subjects continued to accept the theory that a healthy state was a unified state, but St. John did not. His view of English medieval history is an interesting one.

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[91] Elton, England Under the Tudors, pp.398-403.

[92] James I, "The True Law of Free Monarchies," Works, (1616 -reprint, New York, 1971), pp.204-205. Also see the discussion below, pp.

Beginning with Danegeld, he attempted to show that it was levied in a form of parliament under the Anglo-Saxons, but when dealing with the records which demonstrated that William I and his successors retained it, he stated:

> ...many things were done de facto, to the infringing of the liberty of the subjects both in his time, and the times of Hen. 1, and Hen. 2...[93]

Edward I was also a king who had abused the law:

> The statute of Running Mead, Magna Charta, Charta de Foresta, had been confirmed at least eight times from 17 Joh. unto 29 Ed. I, and yet not only the practice, but likewise the judges, in the courts of justice, went clear contrary to the plain both words and meaning of them.... it appears that neither the practice nor the proceedings in the courts of justice in those times, in things between the king, and the subject, are so much to be relied upon, as the words of the law.[94]

There is conflict here, not unity. Law was passed by parliament and broken by kings; the courts were involved and not to be trusted. The words of the law as passed by parliament were all that could be trusted to define a subject's rights because clearly monarchs in the past had abused their power. St. John read back into the history the argument that the King had to live under the law in the same way as his subjects, but took the idea one step further. By using medieval examples wedded to the Tudor development of statute he demonstrated that past kings had broken laws made to protect the rights of the subject, and in doing so took an axe to the "Tree of the Commonwealth" and felled the concept of organic state unity. Statute was not always a reflection of the whole body politic, it could be used to both define the rights of the members, and limit the actions of the head. This idea was made absolutely clear in a statement about a petition presented in one of Edward III's parliaments:

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[93] State Trials, III, 908.

[94] Ibid., III, 913,

> My lords, this petition, though in the name of the commons, yet the lords joined in it; for otherwise all acts of parliament of those times being made upon petition and answer, should be without the lords' assent. Hence it appears, that the whole kingdom, at this time, was so far from thinking that the king could charge them, without their consents to the guarding of the sea, as that they allege, the king himself ought to bear the whole charge. Neither doth the king deny his promise, nor wholly deny the thing ....If the king had given his absolute denial, yet here is the judgement of both houses of parliament express in the point.[95]

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[95] *Ibid*., III, 920. St. John made this point more explicit in his speech against ship money and the judges delivered in the Long Parliament. *Mr. St. John's Speech to the Lords in the Upper House of Parliament, January 7, 1640 Concerning Ship Money*, (London, 1640), p.15.

While it is true that Charles had thrown down the gauntlet by attempting to have the judges make law without parliament, St. John picked it up and in doing so made a radical definition of parliamentary sovereignty. Although he did not discuss the idea of sovereignty and its relation to natural law at length, or the law of God in the way Fortescue, St. Germain, Smith, or Coke did, the result of his argument placed an emphasis on the lords and commons.[96] In his view it was possible for the lords and commons to declare law even if the king should not agree to it, because it was quite possible for kings to break the law. He did not suggest that parliament be arbitrary, for there were always old laws to act as a guide. He was quite willing to grant the king his traditional feudal revenues, for instance, but the implication was still there: the rule of law was paramount, and the king's prerogatives and duties were strictly defined by law. The king had a role, through his position in parliament, to interpret old and make new laws, but if he should break the law then the other parts of parliament could take it into their hands to declare what is actually right. Here St. John came very close to declaring a contract theory of kingship, as far as this was possible within England's legal system.

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[96] St. John's one mention of natural law in his argument is compatible with his theory of property. He equated natural law with anarchy and human law with the ordered constructive community. For a discussion of some of these ideas see, C.B. Macpherson, The Political Theory of Possessive Individualism, (Oxford, 1962), pp.9-70, although professor Macpherson does not really deal with problem of how the idea of community interacts with that of property. For a discussion of concepts of natural law in the Seventeenth-century see, George Mosse, The Struggle for Sovereignty in England, (New York, 1968), Intro., chs. II, VIII.

In some regards he even went further than Henry Parker, who is often considered to be the first important political theorist of the Civil War to define a theory of sovereignty which emphasized the body of parliament over the king. Parker, as a Lincoln's Inn student, had been a contemporary of St. John's and it is likely that they were associates.[97] His first major pamphlet was on ship money and it was published on November 3, 1641, the day the Long Parliament opened. In it he developed most of the same ideas St. John put forward in his argument, but stated them in more emphatic terms. Parker claimed that:

> All our kings hitherto have been circumscribed by law ...when princes are good it fares well with the people, when bad ill. Princes often vary, but the people is always the same in all ages, and capable of small or no variations: if princes would endure to hear the truth it would be profitable for them...[98]

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[97] W.A.S. Hewins, "Henry Parker," DNB, XV, 240.

[98] Henry Parker, The Case of Ship Money briefly discoursed, According to the Grounds of Law, Policy, and Conscience, (London, 1640), pp.24-25. Parker also made an

(Footnote Continued)

Similarly he also declared that common law could not support ship money, though he did not go as far as St. John in his claims for the power of statue:

> ...some say if the common law did allow the King such a prerogative to lay a general charge without consent, then statutes cannot alter it. ...some say our Great Charter was but a grant of the King extorted by force... What the common law was this court [parliament] can best determine, but it is obvious to all men, that no prerogative, but it had some beginning, and that must be from either King or subject, or both: and in this it is not superior to our statute law.[99]

But Parker's view of the constitution, unlike St. John's, still placed a great deal of importance on the element of trust between the King and his subjects. His case was a plea to the King to redress wrongs fostered by his counsellors. Despite the fact that he agreed with St. John on most points, he never claimed that the prerogative was merely a duty owed to the commonwealth. He agreed that salus populi was the supreme human law, but God's iron law of necessity justified the prerogative under this

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(Footnote Continued)
example of Henry III, calling him "the most unworthy of rule that ever sat in this throne," and claimed since that time "many parliaments have had to struggle for due liberty with insolent princes, and have had the power to clip the wings of royalty." But even so, in Parker's view, they never sought to "conditionate" the prerogative. Ibid., pp.36-37.

[99] Parker, The Case of Ship Money, pp.14-15.

rubric.[100] He accepted the notion held by the King and most of his subjects that liberty and prerogative complemented each other when they existed in a healthy balance:

> King Charles his maxim is, that the peoples' liberty strengthens the King's prerogative, and the King's prerogative is to maintain the peoples' liberty: and by this it seems that both are compatible...[101]
>
> ...the beam hangs even between the King and the subject: the King's power doth not tread under foot the peoples' liberty, nor the peoples' liberty the Kings' power.[102]

Here the King has at least some justification to his prerogative by natural law, and the state is best governed when things are in harmony. Even in his later pamphlet Observations upon some of his Majesty s late answers and Expresses, written in 1642 to justify parliament's actions after the King had been refused entry into Hull, Parker continued to stress the concept of trust.[103] Although he claimed the right of parliament to be sovereign without the king, this was only justified as a response to Charles' actions. Parker still claimed that he was "zealously addicted to monarchy," and argued that while Queen Elizabeth obviously broke the law many times and might have "usurped an uncontrollable, arbitrary lawless Empire," she did not because of her goodness and clemency. Her transgressions were ignored by her subjects because of her effectiveness as a monarch.[104] There is more to good government than strict adherence to the law, though if the government is bad the law does give parliament a means to attempt to make it right. St. John, in his desire for exactness and certainty, went further in claiming an absoluteness for the rule of law and the superiority of statute. Although he avoided drawing upon Tudor examples, he did claim that the law was broken by Henry II, Edward I, and Edward III to the detriment of the subject's liberty, and these were not commonly claimed to be lawless kings.

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[100] Ibid., p.7.

[101] Ibid., p.4.

[102] Ibid., p.7.

[103] Henry Parker, Observations upon some of his Majesty's late Answers and Expresses, reprinted in, William Haller (ed.), Tracts on Liberty in the Puritan Revolution 1638-1647, (New York, 1934), II, 170.

In answer to St. John's argument, Edward Littleton, the king's Solicitor-General, immediately attempted to show that in times of danger natural law justified the king's using his prerogative for defence. Common law, statute, and hereditary law had nothing to do with the question.

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[104] Ibid., pp.173, 207.

The King was the sole judge of this danger and when he judged it to be present, positive laws were abrogated by force of reason:

> ...the commonwealth is to be prefered before all private estates.... It is impossible to save private fortunes if the public be lost...[105]

The King, he argued, had many powers and prerogatives over the estates of private persons which were justified by the need for defence.[106] He rejected the idea that the king had to go to parliament for aid and instead listed precedents where kings used their prerogative to levy aid for the defence of the sea.[107] Parliament was too slow to be resorted to in instances of danger and many past instances indicated that it was not.[108]

John Banks, the King's attorney, went even further than Littleton in defence of the prerogative.[109] He claimed that the King could command ships for the defence of the realm,

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[105] State Trials, III, 926-927.

[106] Ibid., III, 997.

[107] Ibid., III, 947ff.

[108] Ibid., III, 960.

[109] Holborn, of course, argued for Hampden after Littleton, and before Banks. His argument is facinating in its own right, but it is impossible to go into any detail (Footnote Continued)

> ...not only by his kingly prerogative, but _jure majestas_.... This power is '_inter jura summae majestatis_' innate in the person of an absolute king ...it is not any ways derived from the people, but reserved unto the king...[110]

Banks used the law of nature to equate the king with his country:

> ...the law of nature, which doth teach us to love our country, and to defend it, to expose the hand to danger, rather than the head should suffer...,

and the law of God which "commandeth obedience and subjection to the ordinance of our superiors."[111] He also claimed that:

(Footnote Continued)
here. He followed St. John on most points and claimed, similarly, that the king was subject to the law and that protection was needed for the subject because king's could err. He spent more time than St. John making excuses, though, constantly suggesting that, in his argument, he was implying nothing derrogatory about Charles I, but was only concerned with future possibilities. This only served to emphasise the point, and it drew Finch's censure. _State Trials_, III, 967, 969, 971, 972, 977, 979, 997.

[110] _Ibid_., III, 1016-1017.

[111] _Ibid_., III, 1019.

> ...the King of England ...is an absolute monarch ...[he] holdeth his empire immediately of the God of heaven.[112]

In the end the judges decided for the king, but only after a process of lengthy deliberation which saw the trial stretch over almost eight months.[113] Many lamented that the case was the hardest that had ever come before them, and they were undoubtedly speaking the truth.[114] The nature of the arguments from both sides essentially meant that they were being asked to decide what the powers of the king were, and whether Charles had abused them. Sir Edward Crawley, Justice of the Common Pleas, exclaimed:

> This is the first case that ever came to judgement of this kind, that I know of, king's have not suffered their rights of sovereignty to be debated as it now is...[115]

Most of the seven judges that sided with the crown concentrated on the question of defence. They argued that the king needed more power than either St. John or Holborne were willing to concede if he was to guard the kingdom effectively.[116] They presented constitutional arguments that were quite moderate but allowed that there was enough evidence to demonstrate that ship money was an established prerogative right. Both Berkley and Finch, however, vented extreme notions about royal power which made them unpopular. Berkley denied that the law knew "any such king yoking policy" as claimed by St. John and Holborne. The law he stated, "is of itself and old and trusty servant of the king's ...Lex is Rex."[117] Finch declared that the king had at all times a property in his subject's goods for the common defence, and stated that , "as the king is bound to defend, so subjects are bound to obey."[118]

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[112] Ibid., III, 1022.

[113] St. John began his argument on November 6, 1637 and the last judge did not report until June 1638.

[114] State Trials, III, 1078, 1089, 1125. Even Finch claimed this, Ibid., III, 1217.

[115] Ibid., III, 1078.

Of the judges that took Hampden's side only two, Croke and Hutton, supported St. John's position that parliament had to be called to vote ship money. Yet, when Croke delivered his judgements the spectators in the court made vocal signs of joy. When Finch had delivered his judgement it met with groans.[119] The third judge, John Denham, was sick and did not give a formal judgement, but put his opinion in a letter which, St. John later claimed, was misrepresented to the king by Finch.[120] Both Humphrey Davenport and John Bramston avoided the larger questions and decided against the writ on technicalities.[121]

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[116] Jones, Politics and the Bench, p.127; D.L. Kier, "The Case of Ship Money," Law Quarterly Review 52 (1936), pp.564-574.

[117] State Trials, III, 1098.

[118] Ibid., III, 1226.

Although judgement was given for the king, both St. John and Holborne became well known, and St. John's speech became immediately famous for its decisive rejection of ship money. One man close to the court wrote that the speech left the matter in much more doubt than he and others had oiginally perceived, and that Littleton's reply was not convincing.[122] According to Clarendon, the trial gave St. John,

> ...much reputation, and called him into all cases where the king's prerogative was most contested.[123]

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[119] The Notebook of Sir John Northcote, (ed.) A.H.A. Hamilton, (London, 1877), pp.85-86.

[120] See below pp.

[121] State Trials, III, 1214-1216, 1243; Conrad Russell, "The Ship Money Judgements of Bramston and Davenport," English Historical Review 77 (1962), pp.312-318.

[122] HMC De L'Isle and Dudley, VI, 132, 136.

[123] Clarendon, I, 246.

This is borne out by one instance in 1640 were it was reported that St. John had again teemed up with Holborne to defend a Northamptonshire man who had been jailed for refusing to pay coat and conduct money.[124]

The speech had an obvious effect. The percentage of uncollected ship money rose from 9% in 1637 to 33% in 1638 even though a much smaller amount was asked for. In Chesire Hugh Cholmondely, the sheriff, related to the council that people were delaying their payment because of the trial.[125] Sir Simonds D'ewes, writing sometime in 1638 or 1639 agreed heartily with St. John's argument, while typically adding that he could contribute "diverse of his own precedents" to prove the tax against the law.[126] Ship Money, he claimed, gave the liberty of the subject

> ...the most deadly and fatal blow it had been sensible of in five hundred years...[127]

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[124] St. John argued that the king had again misused his prerogative by imprisoning without bail for non-payment of what was really a loan. The Diary of Henry Townshend 1640-1663, (ed.) J.W. Willis Bond, Worchester Historical Society 32 (1915), pp.4-5.

[125] Lake, "The Collection of Ship Money," p.61; Gordon, "Collection of Ship Money,"p.143.

[126] D'ewes, Autobiography, p.131.

[127] Ibid., p.129.

> I never saw so many sad faces in England as this new taxation ...occasioned; nay, the grief and astonishment of most men's hearts broke out into sad doleful complaints, not only under the burthen they felt at the instant, but with ominous presage of the issue: for many refused to pay, and most that did pay it , yielded out of mere fear and horror of greater danger...[128]

He said that the judgements of Croke and Hutton outbalanced the six given for the king and as a result, "they made themselves to be reverenced" and "dear to posterity."[129] On the other hand, the speeches of the judges who went with the king became infamous:

> ...there were many impertinencies, incongruities and insolencies in the speeches and orations of the judges much more offensive and much more scandalous than the judgements and sentences themselves.... My lord Finch's speech in the Exchequer Chamber made ship money much more abhorred and formidable than all the commitments by the Council-Table and all the distresses taken...[130]

In Kent, St. John's argument reinforced and augmented the doubts of many gentlemen. It ensured that the issue was inevitably raised to "considerations of far greater consequence" than "a parting of money."[131] Many stated that the judges should not make law, and worried that:

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[128] *Ibid*., p.132.

[129] *Ibid*., p.131.

[130] Clarendon, I, 89-90.

> ...if the tax were adjudged legal, it was law and a vain thing then to think [the king] would ever endure it should be reversed. Parliaments could not do more than king's would suffer, and had seldom overthrown judgements in which all the judges had been heard.... That this being declared law made the king more absolute than either France or the great duke of Tuscany...[132]

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[131] "Twysden's Notebook," p.234.

[132] Ibid., p.236.

IV. THE SHORT PARLIAMENT

After eleven years of waiting, the desire of St. John and his friends was finally fulfilled when the King issued writs for a new parliament to assemble on the thirteenth of April 1640. The calling of this parliament was a great relief for many who hoped that solutions could be found there for the great problems which now burdened the commonwealth. The 1630s had been a decade of numerous grievances, but no unrest before Hampden's trial and the Scottish rebellion. The country had been at peace, and those important figures who continued to oppose government policy were still few, and they only had the opportunity to voice their complaints on isolated occasions. There was dissatisfaction below the surface but it was not until 1638 that it began to percolate upwards, and tension spread through a much wider part of the population. The continued collection of ship money was part of this, but so was Charles' and Laud's religious policy.

The famous riot in St. Giles against the introduction of the new prayer book occurred on July 23, 1637, two months before Hampden's trial began. This had little immediate effect in England but trouble in Scotland continued to mount, and by March 2, 1638 many people in Edinburgh were subscribing to the new covenant proclaimed to defend Scottish calvinism.[1] From its inception, Charles saw the rebellion in very very simplistic terms, blaming the problem on "a very slack council or very bad subjects."[2] He never really gauged the depth of feeling against the new prayer book, and continued to procrastinate, believing the problem could be solved by strengthening the government in Scotland. In reality, matters only became worse.

The Scottish rebellion had little effect in England, apart from providing an example of resistance, until Charles decided to use military force against the rebels early in 1639. By this time the collection of ship money was badly in arrears. Nevertheless, Charles was not in financial difficulty. Under the administration of Bishop Juxon a great deal of money was coming into the Exchequer from increased impositions and customs, monopolies, fines, and other special projects including forest laws, the sale of wardships, and knighthood fines.[3] Charles, though, remained insecure about his finances because of his past experience with warfare: the costs of which could multiply horrendously with no end in sight if an immediate victory was not achieved. Charles' inability to be thrifty, and to take matters seriously was also a problem. So confident was he of success in Scotland that he spent over 80,000 pounds on jewels, gifts, and entertainment while preparing for the war.[4] To save money he resorted to calling feudal levies in the thirteen northern-most counties and asked the greater gentry to raise soldiers from their counties and come to York.[5]

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[1] Gardiner, History, VIII, 314-316, 329-334.

[2] Carlton, Charles I, p.198; HMC Ninth Report, II, 248-249.

The army that gathered in the north was of poor quality, and poorly led, but as expensive as Charles feared it would be. All the money in his treasury was soon exhausted. Throughout the summer the army stood idle while negotiations belatedly continued at Berwick in an attempt to reach a religious settlement. Without money Charles could do little else. He asked for a loan from the City, which was refused, and turned to various other sources, but was unable to raise enough. Finally, on the advice of Wentworth -who had returned from Ireland to deal with the crisis- a parliament was called.[6]

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[3] Dietz, Public Finance, pp.285-287; Jones, Politics and the Bench, pp.84-92, 95-103.

[4] Dietz, Public Finance, p.286.

[5] Carlton, Charles I, pp.202-204; Peter Clark, English Provincial Society from the Reformation to the Revolution, (Hassocks, 1977), pp.368-369.

There was still no fighting in the north when elections for the new parliament got under way, but the atmosphere of excitement was unprecedented. Here the undeniable tension of the last two years made itself felt. There were over sixty contested seats -a very large number.[7] Charles' reaction to the increasingly widespread refusal of people to pay ship money was to lash out at the sheriffs and mayors, ordering them to use their authority to distrain from, or imprison refusers. But resistance had solidified to such an extent that people would not buy the goods that the crown distrained; while the increasing willingness to imprison people made the ship money judgement seem all that much more a violation of liberty.[8] The opposition was too much for the sheriffs and others responsible for collection, and they simply refused to comply with the crown's orders. In London the Lord Mayor's under officers refused to have anything to do with the collection of ship money and he himself had to walk the the streets to distrain for the king. At one linen-draper's he forcibly cut an 11 pound piece of cloth as distraint over repeated protests from the owner that he could expect to be charged in the near future.[9] In Yorkshire, when the sheriff's officers attempted to distrain goods some men barricaded themselves in their houses, and others resorted to physical violence.[10] The validity of ship money was quite discredited. On top of this, most counties resented the trouble and expense of having to keep their militias in readiness for a war which was the result of unpopular Laudian innovations.[11]

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[6] Gardiner, History, IX, 22-26, 29-30, 33-41, 74-78; C.V. Wedgwood, Thomas Wentworth First Earl of Strafford, 1593-1641: A Revaluation, (London, 1961), p.273; Carlton, Charles I, p.211.

[7] Derek Hirst, The Representative of the People?, (Cambridge, 1975), p.111.

[8] CSPD 1640, p.381; Ship Money Papers, p.46.

Ship money, religious innovations, and other grievances became major issues in elections. People were already looking to parliament to effect some changes. The sheriff of Buckinghamshire wrote to Secretary Nicholas:

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[9] CSPD 1639-1640, p.307.

[10] J.T. Cliffe, The Yorkshire Gentry from the Reformation to the Civil War, (London, 1964), p.309.

[11] This problem was greatest in the north, but it was also a problem in the other counties as well, if not to the same extent. Cliffe, Yorkshire Gentry, pp.309-317; Barnes, Somerset, pp.271-273; Holmes, Lincolnshire, pp.137-138; Clark, English Provincial Society, pp.374-375, 377.

> Truly, Sir, I meet with such obstacles I know not which way to turn myself... to deal plainly with you I conceive the main ground or the slackness at this present more than heretofore is the expectation of a parliament...[12]

The voters of Lincolnshire were urged to "choose no ship sheriff" and in Northamptonshire the common people chanted, "we'll have no Deputy Lieutenants!"[13] This popular agitation resulted in a great deal of campaigning both by the court and those who hoped to elect pro-reform M.P.s. The court's effort was a dismal failure. Despite the electioneering of the officers of the Duchy of Cornwall, the Duchy of Lancaster, the Princes' council, the Queen's council, and the Councils of the Marches and of the North only 53 out of 108 candidates put forward by the court were elected.[14] The candidates who opposed government policy were much more successful. Out of 72 candidates identified by Professor Gruenfelder only five failed to be elected.[15] In Essex, Warwick rallied freeholders to support St. John's relations Sir Thomas Barrington and Sir William Masham.

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[12] CSPD 1639-1640, p.588.

[13] Hirst, Representative, p.151,

[14] John K. Gruenfelder, Influence in Early Stuart Elections, (Columbus, 1981), pp.184-189.

[15] Ibid., p.91.

Both were elected. In the same county puritan ministers on preaching tours stumped for the reform candidates.[16]

St. John was elected for the borough of Totnes in Devon as a result of the influence of Bedford. St. John had little to do with the local interests of this borough, but was one of a number of candidates supported by Bedford, the county's Lord Lieutenant, and chief magnate because of his large land holdings centered around Tavistock.[17] John Pym was re-elected for Tavistock, a seat which he also owed to the influence of the Earl. He had represented the borough since 1625.[18] John Maynard, who would be one of the managers of the evidence against Strafford at his trial was elected with St. John for Totnes. He was a native of Devonshire, but had been a practicing lawyer since 1626. Like St. John this was to be his first time in parliament.[19] William Strode was another native Devonian who would support some of the same harsh positions as St. John in the weeks ahead.[20]

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[16] Idem.; Hirst, Representative, p.148.

[17] CSPD 1640, pp.639-640; Eugene A. Andriette, Devon and Exeter in the English Civil War, (Newton Abbot, 1971), pp.39, 55, 189n.3.

[18] Conrad Russell, "The Early Parliamentary Career of John Pym," in Peter Clark and A.G.R. Smith (eds.), The English Commonwealth, (Leicester, 1979), pp.150-151.

[19] J.M. Rigg, "John Maynard," DNB , XIII, 158.

Feelings of tension mixed with expectation were running high when parliament opened, but undoubtedly most members, still clinging precariously to a desire for unity in the state, hoped that problems could be solved by working through a process of consensus between themselves, and with the king. At this point the king needed money and the two houses of parliament wanted grievances dealt with. This does not mean that members were aiming to initiate a process of bargaining with the king. Their notion of political society did not entertain such a concept. The process was governed by common ideas of etiquette, and was accepted to be more akin to an exchanging of gifts than the marketplace. Notions of harmony and order bound together by mutually expected duties and obligations were the moral forces which the gentry and nobility believed in.[21] Such qualities were considered necessary in responsible members of society: vital for a happy relationship between man and wife, the members of a parish community, and certainly between the king and his parliament.[22] The theory was, that if the king worked conscientiously at performing his paternal duty for the good of the commonwealth by listening to the problems of his subjects, the commons would do the same for him, granting subsidies and passing laws out of gratitude. The concept of the organic commonwealth was very much alive. A unified commonwealth was a healthy body politic, and stability and agreement bred success.[23] No parts could be healthy if the whole was not.

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[20] C.H. Firth, "William Strode," DNB, XIX, 60.

[21] For a discussion of these ideas as they related to society see, E.M.W. Tillyard, The Elizabethan World Picture, (New York), especially chs, 2, 4, 7. For a more specific discussion about relations between the crown and the subject see, M.K. Judson, The Crisis of the Constitution, (New York, 1980), pp.76-80.

In the early Seventeenth-century because of conflict between the government and certain subjects, aspirations for a unified well ordered state came to depend on the notion of a harmonious balance between the king's prerogative and the subjects' rights. The peoples' rights were defined either by the inheritance of the ancient common laws or by statute. The king's prerogative was considered absolute as long as he did nothing to break the laws. He ruled the state through his council, had the right to call and dissolve parliament, the right to declare war, the right to mint coins, the right to certain feudal dues, and certain legal privileges.[24] But these privileges were not defined by the law, they were considered natural in the person of the king and necessary to the function of his office. The law did not bind the king, it protected the subject.

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[22] Keith Wrightson, English Society 1580-1680, (New Brunswick, N.J., 1982), pp. 17-23, 51-57, 57-65, 90-108.

[23] Geoffrey Elton, "Tudor Government: The Points of Contact," in Studies in Tudor and Stuart Government, (Cambridge 1983), III, 3-57.

The popularity of this conception underlines how unusual and radical St. John's ship money argument really was. He went further than any of his contemporaries by strictly defining the king's prerogative -quite apart from the authority he claimed for the law and parliament. Looking back to the debate over the Petition of Right, by comparison, most M.P.s in 1628 attempted to avoid saying anything specific about the prerogative. The whole rationale behind going by way of a petition of right was to protest that some subjects had been imprisoned without cause for refusing the forced loan, and that martial law had been used where it should not have been. These things went "against the tenor of the said statutes and the other good laws of the realm...[25] The king had broken the law, and the Petition asked him to restate the subjects' established rights, and not to break them in the future. It did not state that the law bound the King in any way. This could not have been so as long as the King was sovereign, for who would punish him? In principle the King could do no wrong. In debate in 1628, Benjamin Rudyerd claimed that:

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[24] Judson, Crisis, pp.23-27.

[25] CD 1628, III, 339-341.

> ...the King's prerogatives are rather besides the law than against it, and when they are directly to their ends for the public good they are not only concurring laws but even laws of singularity and excellency.[26]

Even Coke, who went farther than anyone in this parliament by suggesting that the Petition should bind the King to observe the existing laws, stated:

> ...for the prerogative, if I thought what I say should touch upon it my tongue should cleave to my mouth.[27]

In debate over whether the lords' proposition that the Petition should include a phrase exclaiming that it was not an attempt to infringe upon the King's "sovereign power," many in the commons became very upset because it suggested that other parts of the Petition had infringed upon the prerogative. This, they claimed was utterly not their intention. Coke and numerous others argued that such a petition should say nothing whatsoever about the prerogative. If the Petition were to include a saving of "sovereignty" it would destroy itself by establishing a power which it was trying to oppose. The subjects' rights were being saved, the prerogative was a power above and apart from them which was,

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[26] Ibid., III, 128.

[27] Ibid., III, 150, 154, 158.

> ...not fit for the king and people to have it disputed further. I had rather for my part have the prerogative acted and I myself to lie under it, than to have it disputed with. When it was in former times it ever bred ill spirits.[28]

The Petition implied that the government had upset the balance between the prerogative and rights by using the former to invade the sphere of the latter. The Petition was meant to restore this balance by asserting the old laws and explaining to the king that he should not break them. It was not to make any new laws against the king.[29]

St. John, with his calculatingly logical mind, marched right through this dark uncharted land of a higher undefinable power and staked out a rather large area for the subject and a narrow path for the king. But, by and large, the notion of the prerogative expressed in 1628 survived through the 1630s. Ship money and the other grievances had grossly unbalanced the constitution, but the aim of most M.P.s at the beginning of the Short Parliament was still to bring it back into equilibrium. St. John's speech in the Hampden case was popular because it maintained ship money to be illegal, and proposed a parliament to restore the subject's rights. His novel constitutional ideas were left waiting in the wings. Sergeant Glanville, in his formal opening speech as Speaker of the Short Parliament, reiterated the the notion of balance in the state:

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[28] Ibid., III, 494-495, 496, 497, and various speeches on the 21, 22, and 23 of May.

[29] For instance, see the Archbishop of Canterbury's speech on the 23 April. Ibid., III, 46-47.

> The liberty of the people strengthens kings' prerogatives and the king's prerogative is to defend the peoples' liberties...
>
> ...nor can there any danger result from such prerogatives in the king by the liberty of the subject so long as both of them admit the temperam[en]t of law and justice...[30]

This concept must be treated with caution, however, if it is to be used as evidence of political motivation. In a majority of cases it represented peoples' aspirations; their hope of what they could achieve. But this was no guarantee of their realization, and English society was often quite different. The problem with the notion that society would be healthy if every element was in its place working happily with all the others was that problem which bedevils most organic models of society; they seek to deal with conflict by eliminating it. In Tudor and early Stuart England there was a fundamental conflict between mens' models of society and social reality, where bitter conflict and individualism were very much in evidence. To use a basic example, the upkeep of bridges was supposed to be the responsibility of the entire local community in an area, but in many cases, because of their expense, even the wealthier gentry refused to spend enough to keep them in good repair. The king himself had a very legitimate grievance about the gentry's shirking of their commitment to the commonwealth by greatly underrating themselves in order to pay less for their subsidies. Competition for social status and wealth was rife amongst the gentry. Money and land were needed to keep up appearances and to build up the power that was the key to lucrative and influential positions in county government.[31] There were numerous feuds between leading families competing for magnate status. Between different branches of families, neighbors, and associates a tremendous amount of time and energy was increasingly being spent on litigation over wills deeds and charters.[32] The fears expressed by Elizabeth Masham before committing herself to marriage with St. John are a telling revelation of this situation.

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[30] E.S. Cope and W.H. Coates (eds.), Proceedings in the Short Parliament of 1640, Camden Society 19 (1977), p.127.

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[31] B.G. Blackwood, The Lancashire Gentry and the Great Rebellion, Chetham Society, Third Series 25 (1978), pp.3-19; Fletcher, County Community, pp.25-29; Cliffe, Yorkshire Gentry, p.94.

There is a major theme to be discovered in St. John's advocacy (which was not new, only more completely defined) of property rights as the cornerstone of the subjects' liberties. As St. John described it, the subject had an absolute legal private right to his property which he could use to protect himself against the encroachments of others including the King.[33] In his view conflict was not to be solved through moral obligation but by protective measures. This was the reality of the law then, as it is today. From the most minor village byelaw to the treason laws, the system had evolved to deal with conflict. Men realized this, which is dramatically shown in a quote by Pym from Strafford's trial:

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[32] Jones, Politics and the Bench, pp.35-37; W.J. Jones, The Elizabethan Court of Chancery, (Oxford, 1967), pp.17, 22-23.

[33] Professor Macpherson is correct to point out the importance of possessive individualism and conflict in early Stuart society. The Political Theory of Possessive Individualism, pp.17-29.

> ...the law is that which puts a difference betwixt good and evil, betwixt just and unjust; if you take away the law, all things will fall into a confusion, every man will become a law unto himself, which in the depraved condition of human nature, must needs produce many great enormities, lust will become a law, and envy will become a law, covetousness and ambition will become laws...[34]

But when speaking of political society most refused to take this reasoning to its logical end for fear of some sort of Hobbesian conclusion. St. John's tentative step towards a contract theory of monarchy ignored these fears of anarchy in a bold attempt to solve the problems of Charles' reign. He cut through the gordian knot of obligation to postulate a polity based on the ultimate rule of law, which could deal with conflict. His contemporaries refrained, even though they just as adamantly desired large reforms, and many of their actions and contradictory moves can be explained by the desire to simultaneously place themselves under the paternal authority of the king while still pressing firmly for reform.[35]

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[34] Rushworth, Tryal, p.662.

[35] Sir Simonds D ewes is a good example of this type of individual. In the 1620s he lamented James' "base" action in "breaking up" the parliament of 1621, and worried that his government was becoming an absolute monarchy, but in 1642, after the king had left for York, he continued to believe that the king had been misled in all his actions by evil counsellors, and that a reconciliation would still be possible if it were not for the negative influence of a few

(Footnote Continued)

In the Short Parliament conflict broke through the members' defences and often dominated proceedings. Clarendon's description of this parliament as the great lost opportunity of reconciliation between the king and his people in the final analysis misses the mark, but such pensive hopes were in the air during those spring days.[36] Conflict broke out in the face of these aspirations because as much as people desired unity and stability, they also desired reformation of the way the country was being governed. Any success at this point would hinge on the action of the king, but Charles only considered the Scottish rebellion. He wanted supply as fast as he could obtain it, and was not prepared for a lengthy delay while grievances were discussed. Notwithstanding, the commons continued to hope. Rudyerd, a veteran of all the parliaments of the 1620s, summed up the problem in his opening speech:

> Parliaments of late times have been disastrous and unfortunate.... There are some here in this house who were present and many who do well remember when the first parliament was broken ...in England. We know from what side it came and for the most part the same

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(Footnote Continued)
violent spirits over the house. The Diary of Sir Simonds D'ewes 1622-1624, (ed.), Elizabeth Bourcier, (Paris, 1974), pp.56, 57, 59, 75, 85; Harlian MSS 163 f.57b, f.73a, f.75b, f.95b-96a, f.258a -typescript copy at the Yale Center for Parliamentary History. After this all references to typescripts at the center will be indicated by the abbreviation (YCPH Typ).

[36] Clarendon, I, 172-173, 183.

> demons have prevailed ever since full of subtlety full of malignity but they have taken upon them such a boldness such an arrogance, as they stand in competition with us.... I wish for their conversion and no harsh way to it. Let us set up more and better lights to lighten their darkness.... the splinters of a broken parliament do make the most dangerous wounds in the body politic which having so long festered must be pulled out with a gentle hand else they may rather ven than cure the wounds.... A parliament is the bed of reconciliation between the king and his people mutually best for both...[37]

Most M.P.s, like Rudyerd, desired reform but were cautious and not a little confused about how to proceed. There were a minority of others though, and St. John was one of them, who wanted to make a strong push for reform right away. They were not happy at having to vote subsidies so that Charles could fight to impose arminianism upon Scotland.[38] St. John was not one of those who presented a speech at the beginning of parliament. He was a new member and this was generally handled by those with more experience. At any rate discursive expositions were not St. John's style. He was impatient and husbanded his words and his actions. The first member to make a violent speech calling for immediate reform was Harbottle Grimston, who was married to Croke's daughter, had refused the forced loan, and had sat in the parliament of 1628. He sat for Colchester in this parliament and as he had been a student at Lincoln's Inn was probably acquainted with St. John.[39] He proposed that the unsettled state of the body politic was as great a danger as any faced from Scotland:

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[37] Proceedings, pp.248-250.

[38] Nicholas Tyacke, "Puritanism, Arminianism, and Counter-Revolution," in Origins, p.142.

> ...the commonwealth hath been miserably torn and massacred and all property and liberty shaken, the church distracted ...the whole nation is overrun with multitudes and swarms of projecting cankerworms and caterpillars.

Magna Carta and the Petition of Right -affirmations of the kingdoms ancient laws- had been completely violated. Grimston advocated that those who had attempted, "...out of parliament to supersede, annihilate and make void the laws," should be sought out, judged, and punished by death, banishment, fine, or imprisonment.[40]

The next day, April 17, Pym made a much more detailed and popular presentation of the commonwealth's grievances. A number of petitions had been presented to the house that morning detailing complaints from various parts of the country and Pym gathered all their complaints together.[41] In a long, loosely organized, rambling discourse of over two hours he listed all he thought was wrong. He did not suggest, like Grimston, that these were evil counsellors who should be sought out. He left it to the house to debate the substance of his speech and advocated drawing up a remonstrance and humble petition to be presented to the king; much as he might have considered doing in one of the parliaments of the 1620s.[42] This speech was popular because it was not violent, and it opened the door to debate on many subjects, but it did not as Clarendon claimed, "break the ice."[43] This was was done by Grimston and Francis Seymour, who both spoke on the sixteenth.[44] Seymour was reported to have said as much again as Grimston. He complained of the abuse of the law, comparing the condition of people in England to the bondage of the Israelites in Egypt.[45]

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[39] Mary F. Keeler, The Long Parliament 1640-1641, (Philadelphia, 1954), p.199; CD 1628, I, 64, III, 336, 511, IV, 3, 467; J.M. Rigg, "Harbottle Grimston," DNB, VIII, 700.

[40] Proceedings, p.135-137.

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[41] Gardiner, History, IX, 101.

[42] Proceedings, 148-156, 254-260; Clarendon, I, 174-175.

[43] Idem.

[44] Because Clarendon wanted to stress that this was a moderate body of men, it was natural that he should chose Pym's speech with, as Clarendon himself put it, its "profound reverence" of "the great virtue of his majesty." Idem.

[45] Proceedings, pp.140-142.

After these opening salvos, and the necessary discussion concerning disputed elections (St. John sat on the committee for privileges) the house proceeded with the business of discussing grievances on the eighteenth.[46] The first item the commons considered after forming themselves into a committee of the whole was not one of the problems of the 1630s but notably the legality of the adjournment of the parliament of 1629 and the proceedings against Eliot and the others in King's Bench. Their rights as a body, and their desire to remain sitting until problems had been dealt with took precedence over all else.

The debate centered on the correctness of the proceedings used against Eliot and the other members who were committed after the adjournment of the session of 1629. Henry Vane, the Secretary of State and Treasurer of the King's Household, warned against resurrecting such a tender subject, but the house pressed on. Charles Jones, the son of William the judge who had been involved in the cases of Eliot, Holles and Valentine, pointed out that the major failing in the case against Eliot and the others was that all of their actions had been preceded by the Speaker "offering to adjourn the parliament without the houses' leave which was against the law."[47] The records of King's Bench and Star Chamber were ordered to be brought to the house, and debate continued about whether the speaker was a servant of the king's or the houses'. The concept of adjournment became confused with dissolution and it was questioned whether the speaker had the right to dissolve parliament. After a long debate the question was referred to a subcommittee, on which St. John sat, to search for matters of fact about the violation of privileges.[48]

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[46] *Ibid.*, pp.159-160.

The question was taken up again on Monday the twentieth and Vane reported from the subcommittee. Afterwards the house inclined towards voting on whether the manner of the dissolution of the 1629 session was not against the liberty of the subject. Edward Herbert, the king's Solicitor, warned that they were putting forth a question which "manifestly trenched on the prerogative."[49] In his first important statement to the house, St. John replied to Herbert in the style that was to mark most of his later utterances. Wasting neither time nor words he flatly brushed aside Herbert's doubts:

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[47] Ibid., pp.159-160, 245; Charles Jones was a member of Lincoln's Inn, as was Robert Manson, one of Eliot's advocates. A.F. Pollard, "Robert Manson," DNB, XII, 1320-1321.

[48] Proceedings, pp.160-162; CJ, II, 4.

[49] Proceedings, p.163.

> ...[St. John] did not believe this question any way against the prerogative. He urged that the matter of fact was proved; and as for the matter of right, he showed that the king called parliaments by his Great Seal and not by bare command of word, and therefore he held that it might not be adjourned with a bare command. Nay he said it was a question whether the Great Seal could adjourn it, for the court must adjourn itself. He concluded therefore that the adjourning was not legal.[50]

St. John's point is provocative in a number of ways. It points to a fact about the dissolution of the 1629 session that is often overlooked. The famous scene of March the second resulted from an attempt to prevent an adjournment of parliament, something that was quite different from a dissolution. To relate the story briefly, on February 23, 1629 the house resolved itself to adjourn for a short time in an attempt to restore some order to the already acrimonious proceedings.[51] On the 25th, the king, still undecided about how to deal with this troublesome parliament, took advantage of the fact that the house had already adjourned itself and ordered a further adjournment for a week.[52] On this occasion the house complied, but in the interim rumors spread that the king was planning a dissolution if debate became too heated. As a result, Eliot and his friends planned to present a general declaration immediately once the house was sitting, condemning Arminianism, the collection of tonnage and poundage, and the collection of customs dues without the consent of parliament.[53] Word of this came back to Charles and he ordered Finch, the Speaker, to request another adjournment immediately once parliament had assembled on March 2. As usual Charles' policy of conciliation was merely procrastination in the hope that matters would improve.

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[50] *Idem*.

[51] *Commons Debates* 1629, pp.103, 169.

On the morning of March 2 Finch carried out his duty and requested an adjournment until the following day at 9:00, "if it was their [the houses'] pleasure."[54] Noes immediately resounded from different parts of the chamber. Finch claimed that he had been ordered to leave the chair and report to the king if any offered to speak after his message. He then attempted to get up, and it was at this point that Holles Valentine and others held him in place. The King had always requested adjournments before this, and the house inevitably agreed. This time they did not. The King had no reason to expect the violence of the commons' refusal when he told Finch that he should leave the chair, and this suddenly left Finch with an important decision to make. Unfortunately for all involved, he stuck to the exact words of his order.[55] Eliot claimed that it was the fundamental liberty of the house to be able to adjourn themselves, and stated that the house was very willing to obey his majesty as "the highest under God," as soon as his declaration was read. But Finch, foolishly, continued to protest that he could do nothing but follow the words of the command, and he presented five recent but weak precedents to support himself, which did not prove the King had the right to adjourn the house through a message given to the speaker.[56] Perhaps he took them from memory. True, this was a very emotional moment -Finch eventually broke down into tears- but by refusing to give in Finch raised the question from one of procedure to one of privilege.[57]

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[52] Ibid., pp.169-170, 239.

[53] Ibid., pp.102-103, 170, 239, 259; Russell, Parliaments and English Politics, pp.414-415; Jones, Politics and the Bench, p.78.

[54] Commons Debates 1629, pp.252-253.

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[55] Ibid., p.252; Gardiner, History, VII, 68.

[56] CJ I, 167, 331, 375, 376.

[57] Commons Debates 1629, pp.105, 253-255.

Eliot spoke his piece anyway, and undoubtedly his condemnation of the government was much more violent for all the tension. Not only did he complain about Arminianism, tonnage and poundage, and customs, but he pointed to Lord Treasurer Weston and the Bishop of Winchester, declaring them to be counsellors as evil as Buckingham.[58] After he had finished, various members took turns upbraiding Mr. Speaker for his transgression. William Coryton claimed such action had

> ...heretofore been judged treason; to bring in the king's commands, when complaint hath been made that the laws have been broken...[59]

Eventually the king received word of what was going on and he sent James Maxwell, the Usher of the Black Rod, to dissolve the parliament, but the door was locked against him. Nonetheless, the commons, on a suggestion from Eliot, agreed to the proposed adjournment.[60] Two days later Eliot and eight others were committed to the Tower. Only on the tenth was the parliament formally dissolved.[61]

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[58] Ibid., pp.258-261.

[59] Ibid., p.261.

[60] Ibid., pp.106, 266-267.

[61] Gardiner, History. VII, 77.

Charles had those he wanted in jail, but now he had to decide what he was going to charge them with. Had they opposed a dissolution this would have been an obvious crime, but Charles' decision to go with an adjournment, and Finch's enforcement of the order, left the king in a difficult spot. There was no law which allowed the Speaker to force an adjournment, even if he was commanded by the king to do so. The procedure of adjournment suggested that agreement was a privilege of parliament, and the commons considered the speaker to be their elected servant. Normally, the speaker, on command of the king, requested an adjournment, but the house had the right to grant it. This is how Coke interpreted the matter. He claimed this was a power the commons had as a court:

> ...the house of commons is to many purposes a distinct court, and therefore is not prorogued, or adjourned by the prorogation or adjournment of the lords' house: but the speaker upon signification of the king's pleasure by the assent of the commons, doth say: This court doth prorogue or adjourn itself; and then it is prorogued or adjourned, and not before.[62]

Perhaps Charles realized the problem he and Finch had stumbled upon right away, and this is why he sent the Usher of the Black Rod hurrying to the house. Whatever the case it undoubtedly explains why he waited eight days to perform the dissolution. In both the act of dissolution and the declaration justifying it the question of the commons' actions against the speaker was completely avoided.[63] On March 3, the Attorney-General put a number of questions to the three Chief Justices. He asked whether the king had an absolute power to adjourn parliament at his pleasure, and whether it was high treason for a member to oppose adjournment. The judges answered in the negative. They claimed that the manner of adjournment could only be decided by the precedents of the house, and that it was not contempt to oppose adjournment, even in a disorderly or tumultuous manner, if the privileges of the house should warrant it. These answers were kept private and when all the judges were questioned seven believed the king did not have the right to dissolve parliament in the way he did. as a result the whole question of adjournment was abandoned in the public questioning of the judges later in the month.[64]

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[62] Coke, Fourth Institutes, p.28.

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[63] Rushworth, I, 660-661; Gardiner, Constitutional Docs., pp.93-95. In his plea before Star Chamber on May 22, 1629 Eliot claimed that no man should be imprisoned for any matters touching parliament, and went on to state that as far as he was concerned the parliament was still sitting. Jones, Politics and the Bench, pp.171-172.

[64] Autobiography of ~~John~~ Bramston, p.50; Birch, Court and Times, II, 16, 18; State Trials, III, 235-240; Gardiner, History, VII, 88n.1.

The case remained a problem and Charles was in no hurry to take immediate action. Proceedings lapsed in Star Chamber because of the difficult question of jurisdiction. When the prisoners sued on writs of habeas corpus the king prevented them from being present to apply for bail and the judges were humiliated.[65] At the end of the long vacation Charles offered bail but made it conditional upon security for good behavior, which, as Selden put it, would have prejudiced their claim of parliamentary privilege. The king was attempting to make the prisoners declare themselves guilty.

The case against Eliot, Valentine, and Holles finally opened in King's Bench on January 30, 1630 and Robert Heath, the Attorney-General, was left to make the claim that the king had the power to adjourn parliament.[66] The defendants, however, were hamstrung by their decision not to admit the authority of King's Bench to try a case concerning the privileges of parliament. Parliament was the highest court, and any breach of privilege, whether by the speaker or any of the members, should, they believed, only be tried there.

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[65] Gardiner, History, VII, 90-96; Jones, Politics and the Bench, pp.79-80; Hulme, Eliot, pp.316-322.

[66] State Trials, III, 293-294; Rushworth, I, 687-689; Hulme, Eliot, pp.331-333; Jones, Politics and the Bench, p.80.

Hence they could not produce a defence or it would have been a tacit admittance of the jurisdiction of King's Bench in this case.[67] In their judgements, the judges tried as best they could to avoid the issue of privilege, especially the issue of adjournment. Hyde and Jones only questioned whether the physical act of holding the speaker down was criminal, and most of the trial concentrated on the ensuing tumult.

Judge Whitelocke pointed out that here the authority of the King had been abused and questioned by scandalous words, but his command for adjournment had no force because it was merely verbal. Had the King himself come to the commons to order the adjourment, or had the Lord Keeper done it under authority of the Great Seal, the commons' action would have been contempt, but as it was the commons were fully within their rights to ignore the Speaker's command and to assert the right ot adjourn themselves.[68] Finally judge Jones pronounced judgement on a nihil dicit, claiming that the privileges of parliament were not being questioned; the court was only dealing with the defendants' attempt "to slander the state, and to raise sedition and discord between the King, his peers and people."[69]

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[67] Hulme, Eliot, pp.131-134.

[68] State Trials, III, 297-298; Rushworth, I, 687-689; Hulme, Eliot, pp.331-333; Jones, Politics and the Bench, p.80.

In a Tudor court this might have been considered treason but here it served as a useful reason to draw the curtain on this tragedy of errors. The fallout from this affair was serious. It converted Eliot into a theoretician of parliamentary rights, and made him a victim in the eyes of his friends. More seriously, it prevented Charles from calling another parliament in peacetime had he so desired. The whole incident made it seem as though he was hostile to parliament when he was really only impatient and aloof. True, if Eliot had been allowed to proceed with his attack on the government the result might have been the same, but Charles' hesitation to dissolve the body indicates otherwise. At any rate the actual turn of events was decisive. The fact that this was the first issue debated in the Short Parliament indicates that it was important. St. John's condemnation of the adjournment was an attempt to right what was considered the most pertinent error, and after further debate it was voted illegal and a committee was set up to investigate how the house should approach the king to seek redress for this grievance.[70] The judgement in the trial against Eliot and the others was not touched because both James Whitelocke and Nicholas Hide had died soon after, and the house did not want to embarrass the other two: William Jones and Croke. Jones was old and harmless and might well have had something to do with raising the issue since his son was the first to declare Finch's action against the law, while Croke had given his opinion against ship money. The now very unpopular Lord Keeper, Finch, was the man they wanted to warn. St. John, though, did not refer to Finch as the transgressor, but the king. He claimed that the king had actually broken the law, which demonstrates his impatience with the accepted sophistry that the king could do no wrong, while others continued to hold it as a vital principle.[71]

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[69] Rushworth, I, 690.

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[70] CJ, II, 7; Proceedings, p.163.

[71] Even in 1642, after the king had forcibly attempted to arrest the five members in the house, most of the debate centered around the actions of the Attorney-General and other counsellors, not the king. Willson H. Coates, Vernon F. Snow, Anne S. Young, (eds.), The Private Journals of the Long Parliament, (New Haven, 1982), pp.12, 14-16, 18, 23-25, 54, 56, 59, 61, 71, 78, 79, 81-84, 245-246, 248, 251, 356-359, 421, 445-446, 467.

From this point on, St. John involved himself with all the major questions that came before the house, and also sat on the committee looking into the role of Convocation, the ship money committee, and the committee to present grievances to the lords, among others.[72] On every instance that he spoke he can be counted with Grimston, Glanville, George Peard, Seymour, and perhaps Pym as a fiery spirit.[73]

On the twenty-fourth of April the king came to the lords to plead for subsidies to be granted right away, but by doing so he managed to create more problems than he solved. He urged:

> If the house of commons will not join to prefer my occasions before their grievances, I conjure your lordships to consider... the preposterous course of the house of commons and desire that your Lords will not join with them, but leave them to themselves. I desire you to be careful in this point, else there may be such a breach (if the supply come not in time) I will not say what... may and must follow.[74]

The lords voted to agree that supply should have precedence over grievances, and when this was reported to the commons,

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[72] CJ, II, 8, 10, 14, 16.

[73] For speeches by Peard see, Proceedings, pp.172-173, 169; for Seymour, Ibid, pp.140-143, 180; for Grimston, Ibid, pp.135-138, 178.

[74] Ibid., pp.264-265.

Charles' fears proved justified.[75] St. John, Pym, Holborne, and others agreed that this was a great violation of the privileges of the commons. Most claimed that it was the lord's vote that was the violation, not the king' request, but St. John angrily stated that the king was not even supposed to be aware of what was going on in the lower chamber. He cited the statute 9 Hen. IV, which he claimed prevented any man from speaking with the king about what passed in the house. Whoever had acquainted the king with the intentions of of the commons,he exhorted, did not deserve to sit there. This was preposterous, but is indicative of St. John's temper.[76]

Inevitably St. John came to take a leading role in the attack on ship money. At first, the house was hesitant to take up the question, not wanting to upset the king, despite the fact that Seymour had condemned it in the harshest terms in his opening speech, stating that the abuses of the sheriffs were "most intolerable," and that "the law of villainy were better in force."[77] On the twenty-third, Peard termed it an "abomination," but he was quickly countered by Herbert and the Comptroller, who forced him to retract his words.[78] But a committee had been set up on the twenty-first to deal with the problem, and on the thirtieth John Maynard reported to the house on its activities. Following this a great debate broke out over whether to have a vote on the legality of ship money. At this point the house was clearly divided on the issue. Some were convinced that there were so many statues against it that the house could take the matter into its own hands. Others advocated seeking the king's counsel before taking any rash action.[79] St. John had no doubts about the matter and impatiently added that the evidence weighed so heavily against ship money that no judgement was needed. The Petition of Right was clearly against it, and thus the house should not even admit further debate, but vote right away.[80]

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[75] Ibid., p.177.

[76] Ibid., pp.178-180.

[77] Ibid., p.143.

The debate continued on May 2 and carried over onto the fourth (the third was a Sunday). Some suggested granting supply if the king would do away with ship money. On the fourth Vane reported that the king was indeed willing to give up levying ship money if twelve subsidies, to be collected over a period of three years, were granted right away.[81] The King had indicated that he was willing to make the unusual move of bargaining with the commons. Debate on this fantastic proposal of a string of continual subsidies was stormy. Rudyerd counted it a "great happiness" to be able to make such a purchase, but Hugh Cholmely saw no saw no reason to make a bargain if ship money was illegal. St. John complained that it was a poor deal, for ship money, monopolies, and military charges had already cost the subject more than twelve subsidies.[82] Glanville, the speaker, made the harshest statement against the levies, wishing:

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[78] Ibid., pp.172-173.

[79] Ibid., pp.184-185.

[80] Ibid., p.185.

> ...that damned and impious opinion of the judges (in saying that ship money was so inherent in the crown that a parliament could not take it away) to be more infamous to posterity, by laying a brand upon it.[83]

Holborne took a moderate course, urging that further searching into the records was needed.[84]

Clarendon suggested that the debate on May 4 centered around two questions put forward respectively by Hampden and himself. Hampden's called for a vote on the king's proposal, but Clarendon, believing that this was done so that a negative answer could be obtained, moved that the house should only take up the matter of supply and leave off discussing anything else for the moment. He claimed that most of the house was in agreement with him, and that his attempt to do the king service was scuttled by the rash fears of Vane and Herbert. Notes of the debates, however, suggest that Clarendon severely underestimated the feeling that was running against ship money by this time.[85] Glanville did indeed urge that twelve subsidies was little to pay to such a gracious king, as Clarendon stated, but he felt the king's offer would only be valuable if ship money were to be declared illegal first.[86] St. John continued to press the house to put the legality of ship money to the question right away. He even went further and urged that:

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[81] *Ibid*., p.193.

[82] *Ibid*., p.194.

[83] *Ibid*., p.195.

[84] *Ibid*., p.194.

> ...all taxes and levies made by the king alleging case of necessity be void, unless such necessity be allowed of in parliament [to prevent any arbitrary judgement under the pretense of *salus regni periclibatur*.][87]

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[85] Clarendon, I, pp.179-182; *Proceedings*, p.193.

[86] *Ibid*., p.195.

[87] *Ibid*., pp.196, 209.

Enough members agreed with St. John to cause the Solicitor to complain that, "the house was much out of the way."[88] Calls were heard to put ship money to the question, but opposition continued, and after a confused debate the house wearily agreed to rise for the day and take up the question again the next day.

Vane and Herbert must have gone straight to the king where they warned him that if the house sat again they would "blast that revenue and other branches of the receipt."[89] Not surprisingly, Charles decided he had to dissolve parliament right away; there would be no question of an adjournment this time. His actions the next day indicate his apprehension about what the commons might attempt to do. He prevented Glanville, one of the bitterest opponents of ship money, from going to parliament on the morning of the fifth by ordering him to Whitehall.[90] Thus, a quick vote on ship money was prevented before dissolution could take place. Charles was also undoubtedly concerned that the commons might go one step further than they had in 1629 and protest the dissolution, since so many hopes were riding on the success of this parliament. After the Speaker had presented himself to the king, the latter bid him to accompany him in going to the lord's chamber. Before the commons knew anything about Glanville's whereabouts the Usher of the Black Rod appeared calling the house to come to the painted chamber. After a brief discussion, without their Speaker, about whether to vote six subsidies in an attempt to save the parliament, the commons proceeded according to the Usher's order.[91] Once the commons had arrived, the king reiterated what he had said at the start of the parliament: that he considered a delay in voting subsidies as bad as a denial. He praised the lords for their cooperation, but complained about the factiousness of the lower house and their idea that grievances should be redressed before supply, "as if grievances could not be redressed but by a parliament." Still, he did not blame the whole house, only "some cunning and ill affectionate" men "stuffed with ill will" who had been the cause of all the misunderstanding. Then the king himself dissolved parliament and many M.P.s rode out of London that very day.[92]

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[88] Ibid, p.196.

[89] Clarendon, I, 182.

[90] CSPD 1640, p.153; Clarendon, I, 182-183; Proceedings, p.243.

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[91] Ibid., pp.243-244, 210.

[92] Ibid., pp.197-198, 210, 244. Strafford was later accused of fomenting the dissolution of this parliament, but this was not the case. He was unhappy with the direction

(Footnote Continued)

Given Charles' impatience to deal with anything but supply, and his inability to see any connection between the rebellion in Scotland and problems at home, it was almost inevitable that this parliament should have been broken. Charles developed no strategy to deal with the commons' unprecedented attack on his government other than to oppose it. He may well have been in his right to do so, and right to claim that the council was the proper place for the problems of government to be worked out, but the commons wanted something more, and his reputation suffered. Even before the parliament began it was rumored that the king had a plan to use the army to "bridle parliament and make them do their duty."[93] Few accepted this at face value, but it is indicative of a growing distrust. Charles made no attempt to counteract the radical demands of St. John and the insolent comments of others. His Solicitor-General merely stonewalled, and no words of possible conciliatory action came from the government. It would not have taken much to sway the affection of many members, but since Charles offered nothing the strident voices of St. John and

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(Footnote Continued)
the commons were going, but he was sick and arrived late for the council meeting held at six in the morning on May 5. At first he resisted Vane and Herbert, then he gave in and voted with the majority for a dissolution. Wedgwood, Strafford, pp.283-284; Gardiner, History, IX, 116-117.

[93] CSPVen 1640, p.30.

other gained the upper ground, and by the afternoon of the fourth the commons were standing on the thin ice of a decision that would have meant rebellion against their sovereign lord and king.

Had the commons voted ship money illegal on the fifth it would have been a direct repudiation of royal policy without the king's consent. The commons would also have staked a claim to a judiciary function which they had not before exercised. Parliament was the highest court in the land, but writs of error had always previously been dealt with by the lords after being sent there by one of the lower courts in Westminster.[94] It would have been the logical outcome of St. John's claim that a question of this magnitude should have been dealt with in parliament -but with the dissolution this would have to wait until the Long Parliament. A vote against ship money's legality would have been a vote against the authority of Charles I and his judges. Given this, it is no wonder that Charles dissolved parliament as fast as he could.

The debates indicate that it was St. John who pressed the hardest to put the legality of ship money to a vote, and the respect he had gained defending Hampden must have won people over. The commons had already indicated this on the twenty-ninth of April when they appointed him to prepare a report on grievances concerning property.[95] The day before he had been chosen by the house to make a speech protesting the breach of privilege committed by the lords, because of his speeches in the commons against it, but he declined because of a lack of knowledge about parliamentary procedure, and Pym took his place.[96] As a new member of parliament St. John may not have said a great deal, but what he did say was very important. His reputation rose quickly, and indeed he was pressed to accept more responsibility than he had experience to handle. Older members such as Pym, Glanville, Rudyerd, and Seymour, who had sat in the 1620s, initiated debate and generally spoke more than anyone else, but St. John was considered the most knowledgeable opponent of ship money, and his strident opposition was a decisive factor in bringing this parliament to its hasty conclusion.

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[94] Coke, Fourth Institutes, p.21.

Throughout the parliament St. John was more extreme than Pym. Although Pym was undoubtedly associated with St. John, he did not have the same novel ideas about the power of parliament. He was still thinking in terms of a petition when St. John was pushing for a vote on government policy.[97] Pym wanted time to work things out with the government, but St. John was in a hurry. It is significant that Pym did not take a major role in the climactic debate on May 4.

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[95] CJ, II, 11; Proceedings, p.181. Pym was assigned to deal with religion, and Holborne the liberty of parliament.

[96] Ibid., p.239.

If St. John was disappointed that the house had missed its opportunity to vote down ship money, he was not unhappy with the dissolution, believing such a move would only heighten dissatisfaction with the king. In a well known passage Clarendon described his encounter with St. John only an hour after the parliament had been sent home:

> ...Mr. Hyde met Mr. St. John, who had naturally a great cloud in his face and very seldom was known to smile, but then had a most cheerful aspect, and seeing the other melancholic, as in truth he was from his heart, asked him, 'What troubled him?' who answered, 'That the same which troubled him, he believed troubled most good men; that in such a time of confusion, so wise a parliament, which could only have found remedy for it, was so unseasonably dismissed.' The other answered with a little warmth, 'That all was well: and that it must be worse before it could be better; and that this parliament would never have done what was necessary to be done...'[98]

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[97] Pym did, however, advocate yearly parliaments in his opening speech, which Coke had claimed was proper according to fifteenth century practice, but St. John never touched on this subject. Proceedings, pp.256-257; Coke, Fourth Institutes, p. 9.

[98] Clarendon, I, p.183.

V. THE OPENING OF THE LONG PARLIAMENT AND THE TRIAL OF STRAFFORD.

As St. John anticipated, affairs went from bad to worse for Charles during the summer of 1640. On the day after the dissolution of the Short Parliament he arrested a number of individuals associated with the Providence Island group. The Earl of Warwick, Lord Saye, Lord Brook, Sir Walter Earle, Pym, and Hampden were all arrested so their papers could be taken from them. Their studies and chambers were searched, and their pockets as well.[1] St. John had all his papers on ship money taken from him, but was not arrested. Possibly this was not deemed necessary because of his lower social status.[2] Charles wanted to find out if there was any organized plan of attack against his government, and he was also concerned that some of these people had been in contact with the Scots, but no incriminating evidence was found. Warwick had some records of Mainwaring's sentence in his pocket, while both Saye and Brook had a number of petitions from silenced ministers. Pym had a whole trunk full of records taken.[3] Such treatment could not have warmed the hearts of any of these men towards the government. The peers were especially offended, since no reason was given for this move other than suspicion. One of the first items of business of the upper house in November was the action against Saye, Warwick, and Brook.[4] This was only the first in a series of proceedings which made it seem as though Charles might well be on his way to becoming "loosed and absolved from all the rules of government," which the commons later accused Strafford of advising him to do.[5]

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[1] CSPD 1640, pp.152-153.

[2] Proceedings, p.185n.2.

The dissolution of the Short Parliament caused a general dampening of spirits throughout the nation.[6] In London it had a very definite effect. On Saturday the ninth of May placards were raised throughout the city urging people of every class to band together, chase the bishops from the country, and kill Laud and the Marquis of Hamilton -leader of the English forces poised against Scotland. On Monday the eleventh a crowd of two to seven thousand armed men rioted and marched upon Lambeth Palace. Laud heard of this before they arrived and fled, leaving a number of armed guards to defend his residence. Finding him gone, the the crowd dispersed, but the next day placards were fixed to the gates of the King's palace, where Laud had taken refuge, warning Charles that no amount of effort would be enough to save his ministers from death.[7] A few days later a number of the rioters were arrested and imprisoned, only to be freed when more crowds of people attacked the prisons.[8] Charles reacted by reinforcing the guards at Whitehall, and by bringing companies of armed men to patrol the city. He also personally signed the warrant to have one of the rioters tortured to determine who his accomplices were. Another was indicted for treason and hanged for attempting to break into the palace with a crowbar.[9] This was the first popular outbreak in London; there would be many more.

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[3] CSPD 1640, p.153.

[4] LJ, IV, 86-87.

[5] Rushworth, Tryal, p.72.

[6] Clarendon, I, 183; HMC De L'Isle and Dudley, VI, 262.

Despite the trouble in his capital, Charles continued to look for ways of raising an army to lead against the Scots. Tension was again mounting between the two countries, and Charles was still determined to use force.

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[7] CSPVen 1640, pp.46-49; Clarendon, I, 187-188.

[8] CSPVen 1640, pp.48-49; Rushworth, II-II, "Laud's Diary," 1085.

[9] Carlton, Charles I, p.215; Rushworth, II-II, 1085; CSPD 1640, pp.191-192.

The siege of Edinburgh Castle proceeded through the spring and summer, while negotiations became less and less promising.[10] A few days before the opening of the Short Parliament, Charles had had a number of the Scottish commissioners, who were in London to negotiate, arrested on the grounds that the Scots had been in communication with the French King. With this gambit he had hoped to stir up feeling in parliament by fomenting the belief that the Scots were planning to involve a foreign, catholic, sovereign in English affairs. Its only effect, though, was to destroy any hope of successful negotiations with the Scots.[11]

In June the Scottish parliament met without either the presence or assent of Charles and passed a number of bills which presented a direct political challenge to Charles. They abolished episcopacy and changed the procedure for selecting the all important Lords of the Articles.[12] This created a division within Scotland itself, but by June the group that had declared itself in favor of the monarchy over the radical changes proposed by parliament had been defeated. The weakness of the English army in the face of the victorious covenanters was apparent after Hamilton's abortive advance on the Scottish camp at Kelso in early June.[13] Charles made a slight attempt at conciliation by releasing the Scottish prisoners, but by August it was obvious that the Scots had gathered an army which was preparing to invade England. The Scots had almost certainly been in contact with the leading opponents of the government. As early as August of 1638 the government knew that there were Scots in London organizing support to bring a Scottish army into England to force a parliament, so those counsellors that had made "a baby of the king" could be disposed of. One of these men was lodging with the tailor John Dillingham, who was a friend of St. John's and later became a political journalist.[14]

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[10] CSPVen 1640, p.48; Gardiner, History, IX, 148.

[11] CSPVen 1640, p.38; Gardiner, History, IX, 96-97.

[12] Ibid., IX, 52-53, 150-152.

To obtain money, Charles attempted a number of courses, all of which met with opposition and weakened his government. More than ever Charles and his council attempted to enforce ship money. The council complained of the miserable state of the prisons, and numerous sheriffs and constables were ordered before the Board. Increasingly the constabulary came under censure for refusing to collect, and some were imprisoned.[15] When this too, was ineffective, the council turned against the sheriffs themselves. On May 7 the Attorney-General was instructed to begin proceedings against eight sheriffs in Star Chamber.[16] Throughout the summer sheriffs were constantly called before the council, and after riding all the way to London, they were subjected to harsh threats of prosecution , and told they would be responsible for the money not paid. Proceedings were initiated against a number of them for contempt of writs, and at least one, the sheriff of Hertfordshire, was put in prison.

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[13] Ibid., IX, 24-32, 165-170.

[14] CSPD 1637-1638, pp.591-592; Pearl, "Oliver St. John," p.506n.3; Gardiner, History, IX, 177-188.

By this time the collection of coat and conduct money was as great a problem as ship money, and numerous deputy lieutenants were called before the Board and questioned by the Attorney-General for refusing to sign the warrants to raise this money.[17] The council also went to great lengths to punish those who had spoken against the government in the

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[15] CSPD 1640, pp.105, 120-121, 140-141, 153, 161, 183, 250, 367, 551, 578-579, 598-599, 657. It would be interesting to know just how many people were thrown in jail because of ship money. The Grand Remonstrance claimed that multitudes were called to the Council Table, and that the prisons were filled with its commitments. Gardiner, Constitutional Docs., p.220.

[16] CSPD 1640, pp.157, 176-177, 183, 368, 538; Barnes, Somerset, 232n.57.

[17] CSPD 1640, p.155, 162.

Short Parliament. On Saturday, May 9, three gentlemen who had sat in the parliament; Henry Bellasis, Sir John Hotham, and Sir Hugh Cholmley were brought before the Board and, with the King present, questioned about words spoken there against ship money and military charges. Cholmley answered and was released, but both Hotham and Bellasis protested that they were not obliged to give an account of what they had spoken under the privilege of parliament. For their efforts they were committed to the Fleet -ostensibly on the charge that they had misbehaved themselves at the Board.[18]

Individual privy counsellors were already unpopular, but the privy council itself was now plunging rapidly into a whirlpool of disrespect. The council had always had the responsibility of examining those it saw as a threat to the state and commonwealth, but now it was walking on thin ice. The level of opposition to ship money and military charges was so widespread that it was no threat to the commonwealth, but only to Charles' policy. The actions of the council made it seem that its power was a danger to the settled legal way of doing things.

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[18] *Idem*.

Previously the council had been the keystone of the constitution.[19] It was looked to for direction in government, and it was seen to symbolize the paternal impartiality of the king's justice. Numerous jurisdictional disputes from all areas were considered by the council for quick decisive resolution. It was this function of arbitration which many men praised above all as being one of the glories of the English monarchical system. As Selden put it:

> A king is a thing men have made for their own sakes, for quietness' sake. Just as in a family one man is appointed to buy the meat. If every man should buy, or if there were many buyers, they would never agree; one would buy what the other liked not, or what the other had bought before, so there would be a confusion. But that charge being committed to one, he according to his discretion pleases all. If they have not what they would have one day, they shall have it the next, or something as good.[20]

The paternal authority of the king, expressed through his council was vital for solving disputes which might take years to resolve if dealt with at law. The council's reputation had already suffered on a number of occasions in the 1620s, notably when some M.P.s were imprisoned after the parliament of 1621; when Coke had his papers taken from him after the session of 1626; and, of course, with the imprisonment of the 70 gentlemen who refused the forced loan.[21] These instances were unpopular, but at least isolated. By the summer of 1640 such things were becoming a matter of policy. Furthermore, the distinction between the Council Board and Star Chamber was becoming blurred. Sheriffs were ordered before the council, berated, and then told they would be prosecuted against in Star Chamber. This generated fear over the ends to which the council could use the jurisdiction of this court.[22] The council seemed to have moved from a stance of arbitration to one of enforcement and interrogation.

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[19] Coke, Fourth Institutes, pp.53ff.

[20] Selden, Table Talk, p.89. Hobbes also confirmed this in his draconian fashion.

The resort to such practices demonstrates how desperate Charles was for money. His forces in the north were still small and so undersupplied that Newcastle had to be left unfortified.[23] The king attempted to approach London for a loan of 100,000 pounds but the aldermen refused his request largely because of the crown's inability to put forward any kind of security. Charles then attempted to force them to prepare a list of all wealthy individuals in the city so that he could assess a forced loan of 200,000 upon them. He warned if the aldermen did not comply, he would raise the amount to 300,000 pounds. Four refused, and Charles had them thrown in prison by order of the council.[24] Very little money was ever raised by this plan. Next Charles decided to seize the Spanish bullion in the Tower, and proposed to debase the coinage. This not only angered all the merchants in the city, but infuriated the Spanish as well. To save England's trade with Spain the Merchant Adventurers agreed to have 40,000 pounds extorted from them, and the bullion was freed.[25]

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[21] Jones, Politics and the Bench, pp.18, 70-71.

[22] This fear is explained in the statute drawn up against both these institutions in the Long Parliament. SR, V, 110-112.

[23] Gardiner, History, IX, pp.163, 185.

None of this helped Charles when the Scots crossed the Tweed on August 20. They sent manifestos ahead of themselves explaining that they were only invading to force a parliament for the redress of grievances. They made an effort to explain that they were not going to war against England, only the government, and promised to pay for all the supplies they consumed.[26] The English were quickly beaten, and the Scots entered Newcastle by the end of the month. There was little Charles could do in the face of this. His levies were mutinous and disorderly. During the summer there had been riots in Essex where soldiers had been more concerned with smashing communion rails than moving north. Some officers were actually murdered, and in Yorkshire the billeting of soldiers was claimed to be against the Petition of Right.[27]

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[24] CSPD 1640, p.155; CSPVen 1640, p.49.

[25] Gardiner, History, IX, pp.170-171; Valerie Pearl, London and the Outbreak of the Puritan Revolution, (Oxford, 1961), pp.100-101.

The king moved north to York to take command of the situation, and on August 28 he was petitioned by twelve peers to call a new parliament. The presentation of this petition was organized by Bedford, Saye, Warwick, Essex, and Brook, but the document itself was drawn up by St. John and Pym.[28] Both these men worked to convince a number of the other peers to sign the document.[29] A few days after receiving this petition, Charles resorted to the archaic device device of calling a great council of peers to meet him at York. But this was no replacement for a parliament. On the tenth of September 300 Londoners met and drew up a petition for a parliament and obtained 10,000 signatures.[30] The privy council decided there was no alternative but to call a parliament, and when the peers gathered on September 24, Charles promised one would open on November 3.

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[26] Gardiner, History, IX, 186-187.

[27] Ibid., IX, 172 176, 177, 194-195; Carlton, Charles I, p.216.

[28] S.R. Gardiner (ed.), Papers Relating the the Delinquency of Lord Savile, Camden Miscellany 8 (1883), p.2; CSPD 1640, pp. 625-653; Brian Manning, "The Aristocracy and the Downfall of Charles I," in Politics, Religion and the English Civil War, (London, 1973), pp.41-42; For a copy of the petition see, Gardiner, Constitutional Docs., pp.134-136.

In the interim the king reopened negotiations with the Scots at Ripon. No firm settlement could be worked out, but the Scots agreed to halt their advance if they were paid 850 pounds a day to support their army.[31] In London the court failed to secure the election of its candidate to the Common Council, and hostility in the capital was not abated. On October 22 a crowd broke into the court of High Commission and smashed it. Laud called on his fellow counsellors to prosecute the offenders in Star Chamber but, wary of what might happen to them, they refused. In the midst of all these troubles the King rode south slowly, with considerable pomp, to open his new parliament, While once again many of his candidates laboured in vain to be elected.[32]

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[29] The petition was published right away in London, and Gardiner attributes this action to Pym. But it is just as likely that it was St. John's doing, for he had been on the verge of publishing Dudley's tract, and had a friend, Dillingham, who would soon be known as a journalist and publisher. Gardiner, History, IX, pp. 201-202.

[30] Ibid., IX, 212-214.

[31] Ibid., IX, 215.

A very different situation greeted the opening of the new parliament on November 3 than had been the case in April. Then there had been hope, now there was determination. By this time there was a general consensus about the need for fairly drastic reform to set the government back on track. As a result, from the very beginning of this parliament there was a concentrated attack, not merely against government policy, but much more so against the ministers responsible for it. The aim of St. John and his friends was to dismantle the council of the 1630s with as much speed as they could. As a result, Laud Finch, Strafford, Windebank, and all of the judges apart from Croke who had been involved in the ship money case quickly came under attack.[33] There was a large degree of support for this action, but also apprehension. Rudyerd claimed that the country had come to a "great extremity which might prove either a remedy or a ruin."[34]

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[32] The Diary of John Evelyn, (ed.) F.S. de Beer, (London, 1951), pp.15-16. The tumults in London scared Evelyn into leaving for the country. Whitelocke, Memorials, I, 107; Robert Ashton, The English Civil War, (New York, 1978), pp.131-132.

[33] The Journal of Sir Simonds D'ewes, (ed.) W. Notestein, (New Haven, 1923), (Hereafter abbreviated as D'ewes (N)), pp.6, 12, 22, 26, 27, 34, 47, 72, 89, 90-92,

(Footnote Continued)

The phrase grasped upon to describe what was intended was "reformation." It was accepted that the new parliament would have to do something to reform the government. The attack on the privy council was the most conspicuous of these efforts, but policies such as ship money would be dealt with too. Even though the aim of the reformers was to undo what the King had already done, rather than attempting to immediately effect changes in the structure of English government, the ~~very fact~~ that they were doing something was new. Not for centuries had a parliament set itself firmly in opposition to the entire policy of a government, nor assumed the power to destroy the latter. The excitement this generated was contagious. Baillie wrote that, "God is here making a new world..."[35] Similarly, Thomas Knyvett joyfully wrote home to his wife about events in December:

(Footnote Continued)
110, 118, 102 ,146, 162-163, 165, 168, 169-170, 172, 174-176, 188, 212, 243, 249, 394-397, etc.; Jones, Politics and the Bench, pp.139-141.

[34] Rushworth, III-I, 25.

[35] Baillie, I, 283.

> Oh' mother, how quietly an honest man sleeps now whilst Grand K -?, alias politicians, macerated with their own disquiet thoughts, lie tumbling upon their frantic couches with disturbed and corrupt consciences. Methinks this is a good pretty. Well, on then and start not; if ever Astrea will appear in her glory in Westminster Hall again, sure it will be after this purgation, where she will not find a false balance left.[36]

Perhaps the most crucial factor which permitted this situation to develop was the changed attitude of the King himself. In the Short Parliament he had opposed every move the commons made along the path of reform and simply demanded subsidies. During the summer he had stretched the constitution far beyond what was considered acceptable to ensure that policy remained under his "own direction and commandment" in both his kingdoms. But his gamble had not paid, and he was forced to come to parliament with his pockets empty and government totally discredited. Charles was in a very weak position: he had no money, and the only influence his discredited ministers could have in the parliament would be negative. As a result he gave up trying to hold fast and fell into one of his lackadaisical moods. On the first day of parliament Charles made an opening speech where he, in Rudyerd's words, "...clearly and freely put himself into the hands of ...parliament."[37] He left it to the commons to consider the best way to proceed for the safety and security of the kingdom.[38] As completely as he had before held his grip on things, he now released it. Not only were the commons able to carry out an attack on the the privy council, but they began to assume responsibility for other government functions as well. They took over much of the effort of supplying the army in the north, and a number of peers undertook negotiations with the Scots, with little opposition from the king.[39] Some fourteen weeks later the king complained of the lengths to which the commons had gone. They had, he warned, taken the government all in pieces, and I may say it is almost off the hinges."[40]

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[36] Knyvett Letters, pp.96-97; HMC Various, II, 529.

Finch, as Lord Keeper, followed the king's opening remarks with his own speech. It was a florid but empty affair with much talk about the "tropics of moderation" and a lame confirmation of the ancient constitution which gave little indication that there was anything amiss in the kingdom.[41] On November 7 the commons got down to business. That morning a number of petitions were read, most notably by Hampden, who presented some complaining of ship money, and Pym who presented the petitions of Mrs. Burton and Mrs, Bastwick on behalf of their husbands. Pym moved that Burton and Bastwick be sent for from prison to prosecute their own causes in parliament. The elder Vane and others objected that only the King's council could make such an order. St. John backed Pym and reeled off a number of precedents to bolster parliament's jurisdiction.[42] Only four days after the opening, the judgements of Star Chamber were being challenged by the opposition leaders.

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[37] Rushworth, III-I, 25.

[38] Ibid., III-I, 12.

[39] Anthony Fletcher, The Outbreak of the English Civil War, (London, 1981), pp.18-24; Donald Pennington, "The Making of the War, 1640-1642," in Puritans and Revolutionaries, (Oxford, 1978), pp.161-177.

[40] Rushworth, III-I, 188b.

This day also saw a number of opening speeches which demonstrate a resolution for reform, and an attack on Charles' ministers. Again Grimston opened, and after denouncing the "new ways of government," he concluded that:

> ...there are some of both functions and professions, that have been the authors and causers of all the miseries, ruins and calamities that are now upon us.... This is the age ...that hath produced and brought forth Achitophels, Hamans, Woolsies, Empsons, Dudlies, Tresilians and Belknapps, vipers and monsters of all sorts ...we shall have the same justice against these,

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[41] Ibid., III-I, 12-16.

[42] Ibid., III-I, 20; D'ewes (N), pp.3-5.

> which heretofore hath been against their predecessors...[43]

Already, the question of treasonous behavior was being raised. Rudyerd attacked evil counsellors in terms which show the distance he had travelled since April:

> when foundations are shaken, it is high time to look to the building.... Let us set upon the remedy. We must first know the disease.... His majesty is wiser than they that have advised him, and therefore he cannot but see and feel their subverting, destructive councils, which speak louder than I can speak of them; for they ring a doleful deadly knell over the whole kingdom.[44]

Pym followed with a long speech, and he like Grimston, accused certain unnamed ministers of treason.[45]

The speeches of Rudyerd and Pym are noteworthy for their efforts to free the king from any complicity in the machinations of his ministers. The parliamentary reformation was not to be an attack on the system of monarchy, or Charles I's rule. The government was to be brought down around the king, and hence most, like Pym and Rudyerd, made an effort to praise his innocence and judgement while condemning his servants in the same breath.[46] This created a large problem, because it was obvious that the King was as much responsible for some policy as his ministers. But, an attack on the King might lead to revolution, which was much more unpalatable. Thus, men continued to speak, like Rudyerd. of "gross condense bodies" which obscured the Kingly sun.[47]

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[43] Rushworth, III-I, 34-37.

[44] *Ibid.*, III-I, 25.

[45] *Ibid.*, III-I, 21-24; D'ewes (N), pp.7-11.

St. John was an exception to this rule. While he never attacked the monarchy, he rarely praised it, or even spoke of it. His only efforts in this direction were a number of curious metaphors which all involved some type of physical assault against the King.[48] As he had demonstrated in his defence of Hampden, he did not hold monarchy in awe but saw some use and historical justification for the institution as long as it was kept rigidly in check.

Once again St. John did not make an opening speech, but was appointed to all the important committees.[49] He was also working behind the scenes, preparing the attack on

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[46] Rushworth, III-I, 21, 25; Clarendon, I, 223.

[47] Rushworth, III-I, 25.

[48] See below note 230.

[49] CJ, II, 24, 25, 26, 34, 36.

Strafford. By this time Strafford was the counsellor the opposition leaders most feared. Strafford had never been popular. He was a man of "too high and severe a deportment," who believed in administrative efficiency, and who liked to get things done in his own way.[50] He had little patience with those who did not follow orders, and often his sharp tongue got him into trouble. In the 1620s Wentworth had been critical of many aspects of the government, but self interest was always high on his list of priorities. Before the death of Buckingham he had shown himself willing to work for the court within a system dominated by the Duke.[51] He was unpopular in his first appointment as Lord President of the Council of the North because he did not shy from using his power to put forward the interests of his own family. He was hardly more popular at court. The queen disliked him, and Charles remained unaffected by him.[52]

In Ireland, once he became Lord Deputy, he managed to alienate almost all the factions there through a high-handed enforcement of his program to make the Irish revenue pay for his administration. He used the Court of Castle Chamber (a rough Irish equivalent of Star Chamber), which he staffed largely with his English friends, to enforce his administration. From Charles' position in London it appeared as though Strafford's tenure was extremely successful. The country seemed at peace, the factions quieted. A surplus revenue was being collected, and Laud's church had been established, but in reality much was amiss.[53]

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[50] Clarendon, I, 197.

[51] Jones, Politics and the Bench, p.132; Perez Zagorin, "Did Strafford Change Sides," English Historical Review 100 (1986), pp.154-161.

[52] Wedgwood, Wentworth, pp.118-119.

It is difficult to say how unpopular Strafford was in England during his time in Ireland, but when he returned in September of 1639 the methods he had used there were connected in mens' minds with the course the government was taking in England. He certainly supported, and abetted the enforcement of revenue collection. He suggested that trouble makers like Hampden should have been whipped into obedience, and later angrily told the council that the London aldermen who refused to assess the forced loan on that city should be hung.[54] Although Strafford was old and sick, his government in Ireland had shown him to be a more effective ruler than Charles. Suddenly his infamy blossomed, and to the same degree that Charles now warmed to the man as a savior, others began to hold him chiefly responsible for the increasingly arbitrary direction of government in 1640. Privately Strafford confided to a friend, "that never had a business been so lost," but this did not stop him from raising 200,000 pounds from the Irish parliament, and building a well supplied, largely Catholic, Irish army.[55] Strafford advised the King that he was ready to bring the army over to England to use against the Scots. It was the fear of this force, in the hands of such a man, that led the opposition leaders to make plans for his impeachment right away in the new parliament. Not only was it thought that this force might be used to whip England into obedience, but its Catholic composition further inflamed fears of a popish plot to introduce hierarchical religion into England.[56] The necessity of impeaching the Earl grew much more urgent when it was reported that he himself was planning to accuse the parliamentary leaders with high treason for collusion with the Scots to bring their army into England.[57]

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[53] Clarendon, I, 196-197; Hugh F. Kerney, Strafford in Ireland, (Manchester, 1959), chs.8, 11; Jones, Politics and the Bench, p.133; Carlton, Charles I, pp.184-185.

[54] Carlton, Charles I, pp.210-211; Pearl, London, p.100.

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[55] W. Knowler (ed.), Letters and dispatches of the earl of Straforde, (London, 1739), II, 348; Carlton, Charles I, p.216.

[56] Caroline Hibbard, Charles I and the Popish Plot, (Chapel Hill, 1983), pp.131-133, 165, 170-172, 173-175, 188-193.

Most accounts of the Long Parliament ascribe the leadership of the attack on Strafford to Pym.[58] In reality, no one acted with greater firmness of purpose than St. John to bring Strafford to the block. Pym was certainly involved, as were others, but it is too easy to place the role of leader on one man. It is clear, though, that the initial rapidity with which the impeachment for treason was introduced and pushed through the house was the work of both St. John and Pym.

A committee was set up immediately to look into problems in Ireland and to investigate Lord Mountnorris' petition against Strafford for passing a sentence of death upon him (it had been reduced).[59] On November 7 Pym moved that a private committee should be set up to deal with

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[57] Rushworth, Tryal, p.2.

[58] Clarendon was the first to do so, but his narration of the first days of the Long Parliament is confused and must be treated with caution. Gardiner did the same, and most recent historians have not diverged from this interpretation. Clarendon, I, 222-225; Gardiner, History, IX, 229-231, 303-306; Carlton, Charles I, pp.224-225; Fletcher, Outbreak, pp.4-17; Wedgwood, Wentworth, Part III, chs. 3-5.

[59] D'ewes (N), p.12; CJ, II,

Strafford's government only, which was done, but not before St. John had listed some precedents in an unsuccessful attempt to debar Strafford's friend Sir William Pennyman (who had been Deputy Lieutenant of Yorkshire while Strafford was Lord President) from sitting on the committee.[60] As soon as this was done, Sir John Clotworthy rose to give a frightening description of the state of affairs in Ireland. Clotworthy was an Irish gentleman completely unknown in England before this. He was brought over by Strafford's opponents and elected for both Bossiney in Cornwall and Malden in Essex.[61] This was almost certainly due to the efforts of Bedford and Warwick. That he was elected twice shows the determination of this group to have him sit in parliament to provide information about Ireland. St. John must have been involved at this stage because he was an important link between Bedford and Warwick. Clotworthy chose to sit for Malden where he displaced the borough recorder who had been put forward by Warwick in the spring.[62] Clotworthy concentrated on the abuses of Strafford's government. He made only one mention of the man, but the implication of the speech was clear enough:

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[60] D'ewes (N), p.12.

[61] Clarendon, I, 224.

[62] Keeler, Long Parliament, p.136.

> If you would rake hell, you could not parallel out of England some persons that we have in Ireland.... The civil government is corrupted, All hearings are at Council Table and matters dispatched without jury, without trial.[63]

He told the commons there was a well paid popish army of eight to ten thousand men ready to march, "where I know not."[64]

On November 11 the matter of Ireland was again raised to initiate a coordinated effort by Pym and St. John to impeach Strafford. Pym opened discussion on the question by asking the commons to question Secretary Windebank about his supposedly careless examination of a woman who had complained of an Irish priest who said that many thousands were in pay to cut protestant throats, and that he personally would cut the king's.[65] Then Clotworthy and Robert King, Muster Master General of Ireland, reported that the latter had heard Sir George Ratcliffe, Strafford's Master of the Rolls, say that the Irish army was to be used against England. The house passed up this tantalizing bait because they were more worried about the possibility of an underground papist conspiracy in England. Instead of debating Ireland they chose to press Windebank about his treatment of Catholics.[66] To bring matters back on course Pym had the doors of the house locked. Ostensibly this was done to continue the questioning of Windebank, but in reality it enabled Pym to accuse Strafford of ordering the Irish army to be brought into England. A select committee was appointed to look into the charge consisting of Pym, St. John, William Strode, Denzil Holles, Lord Digby, and Clotworthy. It met while the doors were still locked and reported back with such haste, that all must have been worked out beforehand. Pym reported there were numerous papists arming themselves and others in England, and that the Tower had been fortified as part of a plot to subdue the city. Strafford was held responsible for urging the king to go to war with the Scots so that both protestant kingdoms would consume each other while the Catholic powers waited for their opportunity.[67] This appealed to the fears of the house, which Pym shared. It was St. John, however, who immediately stated that Strafford should be accused of high treason, committed to prison, and sequestered from parliament. He explained that it was treason to levy an army to subvert the laws of the kingdom using the statute of 25 Ed. III as proof, arguing that as it was treason to deliver forts and castles from trust, it was treason to abandon the laws which were forts for the subjects' rights. This, he claimed, was the judgement made in Empson's case. He advocated a general accumulative charge based on all of Strafford's crimes, and moved for a proclamation to be drawn up calling for witnesses against the Earl.[68] Carrying his argument further, he became the first M.P. to attack the right of the bishops to vote freely in the upper house. Already he was concerned the bishops would be used by the government to oppose legislation in parliament. He began with the established argument that because treason was a case of blood, prelates should absent themselves from any vote concerning it. This was not unusual, but he also advocated that the bishops should not have a vote as they were charged with innovations in religion, and should not, anyway, meddle in temporal affairs.[69]

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[63] D'ewes (N), p.13.

[64] *Ibid.*, p.14.

[65] *Ibid.*, p.25.

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[66] Ibid., pp.26-27.

[67] Ibid., pp.24-30; Whitelocke, I, 113-114; "Sir Roger Twysden's Journal," Archaeologia Cantinana, 1 (1858), pp.188-189.

In this speech St. John presented the two major concepts upon which the commons were to build their case against Strafford: that it was treason to attempt to subvert the law, and, that taken together, Strafford's crimes amounted to a general treason. He was already working on the case, and the point about bishops' votes suggests that he was looking forward to a future trial. This theory of treason has been ascribed to Pym, but it is plain that it was St. John's work. Pym, like many others, believed the Earl had assumed a power above the law, and that if he was to be removed from power charges upon misdemeanors would not be enough, but he was no lawyer. Pym had spent some time in the Middle Temple when young, however there is little indication of much knowledge about the law in any of his speeches; only a general concern with it. St. John was the lawyer among the opposition group. He worked for both Bedford and the Providence Island company in this capacity, and had also been employed by Essex on occasion.[70] He had the knowledge needed to draw up the charge against Strafford. Pym's major concern was with religion, and it is not surprising that he tended to link Strafford with a popish plot.[71] Pym never showed the same determination as St. John. His thinking was still colored by the impeachment trials of the 1620s. He thought the commons would proceed slowly with a process of investigation before impeaching the Earl. Rumors that Strafford was planning to take action against the parliament, though, galvanized him to support a quick impeachment for treason.[72]

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[68] D'ewes (N), pp.29-30, 32-33.

[69] D'ewes (N), pp.29-30.

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[70] Vernon F. Snow, Essex the Rebel, (Lincoln, Nebraska, 1970), p.203.

[71] Russell, "Early Parliamentary Career of John Pym," pp.162-165.

Characteristically, St~~. John~~ was more determined than others to take action. When he spoke against the bishops he was opposed by John Glyn, a fellow lawyer of Lincoln's Inn who would subsequently appointed one of the parliamentary managers to conduct the evidence against Strafford. Glyn complained that what St, John suggested was an entrenchment upon the privileges of the upper house, but this did not obscure the original accusation, and the house quickly agreed to the charges.[73] The lords also agreed with little debate when the commons' vote was reported to them, and on the same day Strafford was placed in the custody of the Gentleman Usher of the Black Rod.[74]

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[72] Gardiner, IX, 231-232.

[73] D'ewes (N), p.30; Keeler, Long Parliament, 187; Rushworth, Tryal, pp.75-76.

[74] D'ewes (N), p.26; CJ, II, 26-27; LJ, IV, 89; Clarendon, I, 226-227.

Over the course of the next few days the commons moved slowly against Strafford now that he was safely locked up. Some initial witnesses were sent for and the committee preparing the charges began its search for evidence.[75] This was the first time in over two centuries that the house had accused an important counsellor with treason on its own initiative. It had been done during an impassioned debate, but now the commons had to decide how they were going to proceed. Impeachment itself was a medieval practice which had been revived in the 1620s. It allowed parliament to charge unpopular ministers with charges of corruption and mismanagement. Sir Giles Mompesson, Bacon, Cranfield, Buckingham, and Mainwaring were all targeted in this way.

The procedure of impeachment was redeveloped in the 1620s in a very piecemeal fashion. In 1621 the commons, desiring to do something about monopolies, fixed upon Sir Giles Mompesson, a monopolist, and asserted that it had been the right of their house in the past to be able to present evidence against a person and demand judgement by the lords. They revived this function working from the antiquarian researches of Edward Coke, John Selden, and Henry Elsying.[76]

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[75] Rushworth, Tryal, p.5; D'ewes (N), p.41.

[76] Colin G.C. Tite, Impeachment and Parliamentary
(Footnote Continued)

Both James and the commons were content to leave the judicial function with the lords. The King hoped he could control the lower house with the upper, and the commons, unwilling to press the privileges of the peers too far, realized that the upper house would need the legal expertise of the lower anyway.[77] Still, not everything was smooth sailing. In 1624 the commons were angered because they felt the lords had let Middlesex off too lightly, although they did not actually challenge the decision.[78]

All of the cases of impeachment in the 1620s were resolved upon accusations of misdemeanors: treason was never raised by the commons. The entire method of government was not under attack, only certain individuals. Coke suggested that Mompesson's case resembled that of Empson, who was indicted for treason, but the peers declared the precedent irrelevant because treason was not involved.[79]

(Footnote Continued)
Judicature in Early Stuart England, (London, 1974), pp.1-3, 4-7, 23, 83-89, 98-110.

[77] Jones, Politics and the Bench, pp.63-66.

[78] Tite, Impeachment, pp.107-109, 115-117, 167-168.

[79] Wallace Notestein, Francis Helen Relf, Hartley Simpson (eds.), Commons Debates 1621, (New Haven, 1953), IV, 115; Tite, Impeachment, p.107.

Strafford's crimes seemed much more dangerous than anything done in the 1620s, and hence it was sensible to charge him with treason. But the question of procedure would prove to be very difficult. For a time the commons avoided the issue and concentrated on the initial step of actually finding witnesses and bringing them to London. On November 18, however, the question of who would examine the witnesses created problems. In the 1620s the commons had questioned witnesses as part of their investigation into matters of fact.[80] But in cases of treason there was a question of how far the commons should be involved. Charles had placed the Earl of Bristol's case entirely in the hands of the lords.[81] The Appellants who had attacked Richard II's ministers in the Merciless Parliament were also all peers (this example was kept in the background , though, because the unhappy reign of Richard II was a politically sensitive topic -see below pp.174-189). The lords had some justification for claiming that they should deal with the entire case. This put the leaders of the attack in the commons in a difficult position. They wanted to retain control over the case, but at the same time needed to involve the lords in the questioning of witnesses to examine members of the the privy council and other peers. To achieve this they were forced to let the lords take charge of the examination of witnesses. But the commons were still determined to continue in the role of accuser, so they needed to hear what the witnesses had say. To get around this problem, St. John proposed that there were precedents which showed that members of the commons had previously been present with the lords in examinations of witnesses.[82] St. John rightly suspected that the lords, taken together, were not very determined to execute Strafford. He argued that even if the case were to be removed from the jurisdiction of the lower house, there was no turning back:

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[80] Tite, Impeachment, p.39.

[81] Ibid., p.189, Jones, Politics and the Bench, p.67.

> ...now the commons had accused [Strafford] the upper house was possessed of it, and had the cognizance of the cause if the commons should go no further in the charge. But the King's Attorney, if the commons should go no further, was to prosecute the cause ex parte Domini Regis till matters appear either to acquit him [or to] condemn him.[83]

There was little precedent to back up this assertion, but the implication was clear: the commons were not going to let the case be abandoned.

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[82] D'ewes (N), pp.42, 538.

[83] *Ibid*., p.42.

St. John made his doubts about proceeding by way of a trial of impeachment obvious the next day. He moved that the records of King's Bench be searched for information about attainder while the commons debated the issue of witnesses. It has often been assumed that the commons' managers at Strafford's trial only turned to this method of giving judgement by bill after it looked like their case was unequal to Strafford's defence.[84] But, obviously St. John had already considered that the house might have to use this method if it was going to incapacitate Strafford. The suggestion was quite radical. Attainder had the reputation of being a potentially arbitrary proceeding, and had not been used by parliament in this way since the reign of Richard II. It was suggested in 1628 by William Coryton that attainder be used against Mainwaring, but it was not.[85] Mainwaring had been impeached for a number of sermons upholding the king's right to levy aid by right of natural and original law.[86] Francis Rous condemned Mainwaring for attempting to "alter and subvert the frame and fabric of the whole commonwealth," and to "divide the King from the body and the body from the head: to overthrow the frame of parliaments," and Pym said much the same thing.[87] Despite the serious nature of these charges, there is no indication that the commons intended to charge Mainwaring with treason; they only wanted to prevent him from preaching. Both Pym and Selden rejected the idea of attainder because they felt it was inappropriate, and would be an infringement upon the jurisdiction of the upper house.[88]

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[84] Gardiner, History, IX, 328-331; Wedgwood, Strafford, pp.357-358; William R. Stacy, "Matter of Fact, Matter of Law, and the Attainder of the Earl of Strafford," American Journal of Legal History 29 (1985), pp.336-338; John H. Timmis III, Thine is the Kingdom, (Alabama, 1974), pp.125-160.

[85] CD 1628, III, 405, 409-410.

[86] Ibid.,III, 261-262n.59-69.

In contrast to the position of Pym and Selden in 1628, St. John wanted to use attainder to ensure that the commons were involved in the process of judgement against Strafford by taking the initiative to draw up a bill condemning him. Both Pym and Selden would later have doubts about attainder for the same reasons they put forward in 1628. Not surprisingly, St. John's suggestion was immediately opposed by Solicitor Herbert who claimed the like had not been done before. The records of attainder were very sensitive and kept under the protection of three locks which required separate keys held by the Chief Justice, the Attorney-General, and the Clerk of the Crown. Since the

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[87] Ibid., III, 261, 407-408, 409-410, 413.

[88] Ibid., III, 406, 408, 410; Rushworth, I, 593-605, State Trials, III, 335-358; D'ewes (N), p.45.

Tudors had come to power the records had only been used by the crown. St. John claimed that by act of parliament the subject might have access to any record. He was backed up by D'ewes, Pym and others. D'ewes, who was convinced Strafford deserved to lose his head, asserted that every record, even those "made against the king," might be examined.[89] St. John was successful, and a committee was formed to search the records, but the point was so sensitive that it was not raised in debate again until next April, after the trial had begun.[90]

St. John's move to investigate attainder was carefully considered. He wanted to move in a hurry to avoid the serious political questions Strafford could raise in his defence. Over the next two months St. John examined the medieval precedents which demonstrated that attainder had been used in the past to dispose of unpopular ministers close to the crown. Since 1400 attainder, in contrast to the medieval practice, had only been used by the crown against its enemies where a conviction would be difficult or impossible to obtain in the courts.[91] By looking beyond the last 200 years of history St. John demonstrated that this trend could be reversed, and that attainder could be used by parliament against a minister of the crown even if the king did not wish it. It is no wonder that the commons avoided this question, for it introduced a procedure that came much closer to being revolutionary in a political sense than anything else they were dealing with at the time.

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[89] D ewes (N), p.45.

[90] CJ, II, 31.

[91] See below pp.176-179.

The reign St. John investigated most thoroughly was the troubled one of Richard II because the procedure used in 1388 most closely approximated what he wanted to do, but Edward II's reign was actually the first instance where parliament was used to legislate against unpopular ministers. First Hugh Gaveston in 1308, and then the Despensers in 1321 were ordered into exile by parliament. In both cases the accused were "awarded," or sentenced without any previous judicial process. The acts were the work of a frustrated baronage who had no constitutional means of removing these unpopular favorites.[92] Against Gaveston they claimed they were taking action in the name of the people because:

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[92] John Bellamy, The Law of Treason in the Middle Ages, (Cambridge, 1970), p.179; M.H. Keen, England in the Latter Middle Ages, (London, 1973), pp.50-53, 68-69.

> ...he [makes] himself by his wickedness, sovereign of the realm, betraying his liege lord and the crown, and going against his country.... Wherefore, the people 'award' him, as one who is... a traitor to his liege lord and to the realm, as a man attainted and judged...[93]

The impeachments of the Merciless Parliament were similar, but more judicially involved -and more relevant to the Seventeenth-century because they came after Edward III's great statute of treasons. The events leading up to the Merciless Parliament began with an impeachment, although not for treason. In the parliament of 1386 the commons took it upon themselves to impeach Richard II's minister Michael de la Pole on charges of misgovernment. They requested his removal from the government but Richard refused. Parliament threatened him with the fate of Edward II, which forced him to give in.[94] Because of the king's attitude a great council of magnates was appointed by parliament, against Richard's will, with full control over all revenues and expenses of the household. This effectively put Richard's kingship into a minority. In 1387 Richard, bitter about the authority taken from him, posed a series of constitutional questions to the judges of the common law. These men were all colleagues of his loyal counsellor Sir Robert Tresilian, Chief Justice of the King's Bench. Richard asked whether the statutes appointing the commission council "derogated from the regality and prerogative of the lord king," and if those who compelled the king to assent should be punished as traitors. The judges answered in the affirmative, also confirming that the king could dissolve parliament whenever he wanted, and that it was unlawful for parliament to impeach a minister without the king's consent. This was intended to prepare the way for Richard's enemies to be charged with treason, but such a stark assertion of the prerogative was unpopular. As a result Richard was unable to press his charges. Quite the opposite; he was forced to call another parliament in 1388 because five of his opponents, the Lords of Gloucester, Arundel, Warwick, Bolingbroke, and Nottingham decided to "appeal" five of Richard's closest advisors: Alexander Neville -Archbishop of York, Robert de Vere -Duke of Ireland, de la Pole, Robert Tresilian, and Sir Nicholas Brembre, on charges of treason.[95]

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[93] B. Wilkinson, Constitutional History of Medieval England 1216-1399, (London, 1958), III, 364-365.

[94] Keen, Later Middle Ages, pp.279-280.

The appeal was a common Fourteenth-century legal procedure used to approach the king's council in order to initiate proceedings in both common and civil law. It had never been used in parliament before, but by this time parliament was the accepted forum for state trials. Also, the statute of 25 Ed. III for treasons left all doubtful cases to be tried in parliament. The Lords Appellant used the process of appeal rather than impeachment because an impeachment could only be carried out after a parliament had been called, but an appeal of such magnitude would necessitate the calling of a parliament. Up to this point there had also been no impeachments on charges of treason.[96] Once parliament met they hoped to proceed as far as possible with common law procedure, but four of the appellees had fled the country. Common law jurisdiction would not then have been enough to convict those absent, only outlaw them. As a result the Appellants consulted the justices, sergeants, and others knowledgeable in both common and civil law. Influenced by the king, these people made a general decision that the whole process of appeal in parliament could not be justified by the common law. The Lords deliberated this verdict and replied that the "law and course" of parliament took precedence over any other court, and that they as judges could hear and decide the appeal.[97] The lords took their role seriously; with the advice of lawyers they considered the charges and the evidence before arriving at a verdict. Brembre was allowed trial and convicted, but the four absent counsellors were convicted by notoriety.[98] Brembre was executed, and Tresilian too, once he was found in hiding. Later in the same parliament a number of the king's other supporters were impeached for treason and other lesser crimes, then sent into exile in Ireland.[99]

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[95] *Ibid*., pp.279-282.

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[96] Alan Rogers, "Parliamentary Appeals of Treason in the Reign of Richard II," American Journal of Legal History 8 (1964), pp.95, 98, 101, 102, 105, 106-107; T.F.T. Plucknett, "State Trials under Richard II," Transactions of the Royal Historical Society, Fifth Series 2 (1952), pp.167-168; T.F.T. Plucknett, "Impeachment and Attainder" Transactions of the Royal Historical Society, Fifth Series 3 (1953), pp.145-146.

The process of appeal used here developed into attainder in the Fifteenth-century.[100] Generally, acts of attainder were used in the Fifteenth-century to proscribe defeated rebels who had fled and obtain forfeiture of their land, or to bring difficult cases of treason, which could not be judged under the statute of 1352, into parliament for deliberation and judgement.[101] Acts of attainder had the advantage of not setting precedents in the ordinary courts of law.

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[97] Rotuli Parliamentorum, III, translated in B. Wilkinson, Constitutional History, pp.248-250; Rogers, "Parliamentary Appeals," pp.108-111; Plucknett, "State Trials," p.168.

[98] Rogers, "Parliamentary Appeals," pp.112-115; Anthony Steel, Richard II, (Cambridge, 1941), p.154; Plucknett, "State Trials," p.169.

[99] Keen, Later Middle Ages, p.184; Steel, Richard II, pp.155-156.

[100] Rogers, "Parliamentary Appeal," p.124; Plucknett, "Impeachment and Attainder," pp.60-61; Bellamy, Law of Treason, pp.179-182.

From the perspective of the Seventeenth-century the difference between the appeals of 1388 and the acts of attainder in the Fifteenth-century was not as clear cut as it is now. In the older law books the Anglo-Norman word atteindre was used in a number of senses, the most important of which was to designate judicial convictions. By the Fourteenth-century it was being used generally to describe any case in which final legal judgement had been made, and guilt established. Gradually the word attaint came to be used in the records of the courts and parliament to denote the legal consequences of a conviction.[102] It only came to refer to the specific process of obtaining judgement by bill in parliament because of the use of this method to obtain the forfeiture of a convicted person's lands. Thus it was not difficult for St. John to interpret the appeals and impeachments of the Merciless Parliament as acts of attainder, even if technically they were not yet so. The words of the judgement against a number of Richard's counsellors were:

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[101] For a detailed treatment of this development see Bellamy, Law of Treason, pp.175-205.

[102] John P. Collas and T.F.T. Plucknett (eds.), Year Books of Edward II, Selden Society 70 (1953), pp.xxi-xl.

> Primerement, les Communes du Roialme accusont &-empeschont, q Simond de Beurle, Chivaler, John Beauchamp, Chivaler, John Salesbury... Alisaundre Ercevesq d'Everwyk, Robert de Veer Duc d'Irland, Michel de la Pole Counte de Suff', Robert Tresilian Justice, & Michel Brembre, Chivaler, atteintz en cest present Parlement de hauts Treasons...[103]

The other counsellors and judges who were impeached were also said to be attainted.[104]

St John first demonstrated his knowledge of the treason trials of 1388 in a speech before a conference of both houses on January 14, 1641, concerning ship money, the charges against the judges, and the charge of treason against Finch. By this time, Laud, George Ratcliffe, and Finch had all been accused of treason by the commons.[105] On the fourteenth of January St. John spoke before the lords to explain why the commons had voted ship money illegal, what crimes the judges had committed, and why Finch should be accused of high treason. Since the basis of his attack on Finch was similar to that he would subsequently employ against Strafford the speech indicates St. John's ideas on treason and attainder at this time.[106]

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[103] Rot. Parl., III, 241; SR, II, 47, 50.

[104] Rot. Parl., III, 241-242, articles 3 and 10.

[105] D'ewes (N), pp.193, 202-204, 239-240, 394-397, 412.

St. John developed his ideas in a capsule history of Richard II's troubles. This in itself was a novelty. In the 1620s Richard's reign was rarely mentioned n parliament.[107] Although St. John's major purpose was to compare the actions of the judges who declared ship money legal to the judges who affirmed Richard's questions about his prerogative, he described the whole process of the 1388 trials. He wanted to establish that the proceedings against Richard II's counsellors were not arbitrary, although he went beyond this to make claims for the authority of parliament. The judgements of 1388,

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[106] The speech was printed immediately after, and the date given was January 7, but it was actually given on the fourteenth. On February 6 the house fell into debate about the published version of this speech because someone claimed it was full of errors and mistakes, and proposed that the printer should be severely punished. The house agreed. The speech is clearly filled with spelling mistakes and grammatical errors, which is not surprising considering the speed which which it went to press; but this seems a harsh treatment for such mistakes. Sir Walter Earle moved to have a true copy printed. St. John replied in the negative and instead proposed that it be entered into the journals of both houses -something that had never been done before with speeches. St. John's reaction indicates that it was probably the radical ideas presented in the speech, and the rapidity with which they were disseminated that created the concern, not the spelling errors. Undoubtedly, St. John, who had just been appointed Solicitor-General, advocated suppressing the speech to protect his new position. He made no adverse comments about the printing of any of his other speeches. D'ewes (N), pp.249, 253-255, 332.

[107] Tite, Impeachment, pp.22-23, 28, 124-125, 222 -table I. In 1626 Eliot compared the attack on de la Pole with that on Buckingham, but indicated this was not meant to reflect on Charles. Ibid., p.186n.15.

> ...were not huddled up in haste, but they were given upon long and mature deliberation.... [parliament] spent a long time, and great pains to examine the evidences, the better to satisfy their own consciences and the world.[108]

Parliament, as the highest court in the land, was bound only by its own legislation:

> ...in treasons which concern the king and kingdom, they are not bound to proceed according to the rules of the common law and inferior courts, but according to the course of parliaments, so as may be for the common good.[109]

St. John went so far as to claim that Richard's counsellors' treason against the commonwealth had been an attempt to overthrow parliament. This he based on the actions taken against the commission set up in 1386:

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[108] Mr. St. John's Speech... Concerning Ship Money, p.38.

[109] Ibid., p.37.

> During the minority of that King [Richard II] by ill counsel of some near his person: there were miscarriages in government. In the tenth year of his reign, and the twentieth of his age, a parliament was holden, in that parliament in aid of good government, and of due execution of the laws, a commission was awarded ...the commissioners had power in all things ...concerning the good of the realm, with full power finally to determine and put in execution for the honor of the King, the better governance of the peace, and the laws of the realm, and relief of the people[110]

The treason was:

> ...the endeavoring to overthrow this commission issued by authority of parliament for the welfare of the realm, upon pretense that it trenched upon the royal power, tended to the disherision of the King, and the derogation of the crown.[111]

The judges specifically were charged with treason because they knew,

> ...that this commission was awarded in parliament that it was for the public good ...they knew the law, and that it was not treason, and had delivered their opinions thereby under colour of law to cover their treasonable intent...[112]

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[110] *Ibid.*, pp.33-34.

[111] *Ibid.*, p.34. The actual words used against the five appellees were that they "made, conspired, and proposed diverse horrible treasons and evils against the King, and the said lords so assigned, and against all the other lords and commons; which were assenting to the making of the said ordinance and commission. in destruction of the King, his regality, and his realm. *SR*, II, 47.

[112] *Mr. St. John's Speech ...Concerning Ship Money*, pp.36-37.

St. John summed up this part of his argument with a truly remarkable assertion of the authority of parliament. Repeating his claim that the attempt to overthrow statute law was treason, he stated the treason:

> In that of Ric.2. it was for overthrowing but one act of parliament, which was likewise introductive of a new law, for the commission had no life from the common law, for in truth it was derogatory to the crown. It had only the strength of parliament to support it, which was sufficient, it was for the common good.[113]

This confirms what St. John said in Hampden's case, and takes it one step further by claiming that the body of parliament can forcibly remove some of the king's power if it is for the common good.

In other parts of the speech, St. John developed his theory of how action taken to subvert the laws could be considered treason. He reasoned that the provision of Edward III's treason statute which stated it was treason to conspire the death of a judge or counsellor while they were on the bench was meant to protect the law and government, and therefore it was treason to attempt to subvert the law:

> ...in that of Ric.2. the offense was, the endeavoring to overthrow parliaments, and parliamentary

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[113] Ibid., p.42.

> proceedings, the conspiracy of the death of the procurers was only an aggravation. It was not treason to conspire the death of a privy counsellor, or to kill a judge, unless he be on the bench, and in that case it is treason, because of the malice, not of the person, but to the law; so that there the treason lay in this, not that they conspired barely against their persons: but with reference to their proceedings in parliament, and thereby to overthrow acts of parliament...[114]

He also expanded dramatically upon his earlier analogy of the kingdom's forts:

> ...the laws are our forts and bulwarks of defence.... by these opinions there is a surrender made of all legal defence of property ...there is no meum and tuum between the king and the people besides that which concerns our persons.... For now the law doth not only not defend us, but the law itself is made the instrument of taking all away. For whenever his majesty or his successors shall be pleased to say that the good and safety of the kingdom is concerned, and that the whole kingdom is in danger: then when and how the same is to be prevented, makes our persons and all we have liable to bare will and pleasure.
>
> By this means, the sanctuary is turned into a shambles, the forts are not slighted, that so they might neither do us good nor hurt: but they are held against us by those who ought to have held them for us, and the mouth of our own cannon is turned upon ourselves.[115]

Although the commons played only a subordinate role in 1388, St. John ignored this fact. He wanted to emphasize that Richard's counsellors had been tried in parliament for treasonous action against the institution. He knew that because attainder had developed into a form of bill procedure the commons would be assured of an important role in the case if they chose it. But because the commons were not willing to accept the idea of attainder, they proceeded with preparations for a trail of impeachment; which soon exasperated St. John. The question of how the witnesses were to be examined was not solved until the beginning of December. On November 20 the commons sent a message up to the lords suggesting that some of their members should be present at the examinations to propose questions. On the twenty-fourth St, John listed a number of precedents to prove that the commons had a right to be present. Three days later a committee was formed to examine these precedents and look for others, but regardless of this evidence the commons demonstrated they were determined to examine the witnesses. A committee was formed to press the lords on this point and on December 1 the upper house agreed to allow the original eight members of the committee formed to draw up the charges against Strafford to be present.[116]

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[114] *Ibid*., p.41.

[115] *Ibid*., pp.29-31.

On January 28, after the secret examination of numerous witnesses, the charges committee presented a final list of

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[116] LJ, IV, 94, 96; CJ, II, 38-39; D'ewes (N), pp.60-62, 76, 80; Rushworth, Tryal, pp.15-16.

24 accusations -the result of a great deal of work.[117] It now had to be decided how the trial would be organized. Clarendon made a list of all the problems which had to be faced:

> ...whether [the trial] should be in the house of peers? which room was thought too little for the accusers, witnesses, judges and spectators. Who should prosecute? whether members of the commons or the king's council? Whether the bishops (which were twenty-four in number, and like to be too tender-hearted in matter of blood, so either to convert many or to increase a dissenting party too much) should have voices in the trial? ...and lastly whether the commoners should sit uncovered? and whether any of the commons should be examined at the trial on behalf of the Earl?[118]

The commons took their charges up to the lords, but for two weeks little was done. On February 16 a number of M.P.s became impatient, and it was moved to send a message to the lords desiring them to end consideration of the charges. One of the most impatient was St. John, who claimed that not only could the commons desire expedition of their impeachment, but would be in their rights to demand judgement right away; they might even desire the lords to alter their judgement.[119] Tempers rose again in the commons on the eighteenth when the lords granted Strafford another week to prepare his defence. He already had seven lawyers working for him who had prepared a 200 page statement.[120] Arthur Goodwin and Henry Martin moved to adjourn the house for a week in protest, and Martin claimed the lords were simply trying to "marge" the commons.[121] This suggestion was rejected, but St. John pointed out that to give so much time to prepare a defence with the aid of counsel in a case of treason went against all former practice.[122]

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[117] D'ewes (N), p.297; Rushworth, Tryal, p.19.

[118] Clarendon, I, 286.

[119] D'ewes (N), p.363.

The question of Strafford's counsel was prickly. St. John was right to assert that no counsel was generally allowed for a person convicted of treason.[123] The lords, however, favored giving Strafford's counsel at his trial, and in the end the commons agreed but only to comment on matters of law.[124] When Strafford's defence was read to the commons on February 25 it did not impress D'ewes as much as it has impressed some historians. He called it "very weak and invalid."[125] On the twenty-seventh Bulistrode Whitelocke, reporting from the charges committee, questioned the house as to whether they would now consider attainder, but all declined it.[126]

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[120] Ibid., p.374; LJ, IV, 100, 139; Timmis, Thine is the Kingdom, pp.54, 57.

[121] D'ewes (N), p.371.

[122] Ibid., p.374.

[123] This was not the most salubrious feature of Tudor treason trials, but nevertheless it was a fact, and St. John was angered that there should be one rule for those accused by the crown and another for those accused by parliament. John Bellamy. The Tudor Law of Treason, (Toronto, 1979), pp.142-153.

[124] D'ewes (N), pp.433-475, 479, 482; LJ, IV, 178-179; Rushworth, Tryal, p.34.

Final arrangements for the trial were hammered out over the next three to four weeks in a series of conferences between the two houses. It was decided to hold the trial in Westminster Hall, with the king's permission.[127] The evidence against Strafford was to be managed by a committee of ten M.P.s already on the charges committee, and the Earl was allowed to call witnesses in his defence.[128] The lords also granted the commons the right to be present at the trial but this point caused trouble. The charges committee wanted the commons to be present so they could ensure judgement was given. St. John was especially adamant on this point, claiming that if the commons did not press for this right then they would:

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[125] D'ewes (N), pp.403, 407.

[126] Ibid., pp.411, 415-416.

[127] LJ, IV, 179, 181, 184; Rushworth, Tryal, pp.34-35.

[128] Ibid., pp.35-38; LJ, IV, 184.

> ...lose all our liberties and sit here for nothing but to give subsidies.[129]

He postulated that at one time both houses had sat together, and warned that if they allowed any more practices of dubious legality then the lords:

> ...may bring in an arbitrary government and so we shall all be ruined, for you may see how the commons are accused before the lords without the common's consent.[130]

One point the commons did not have to worry about was the bishops' votes. Because the case involved a death sentence, the bishops voluntarily absented themselves from any debate on the trial. On the Saturday before proceedings opened they also relinquished their vote.[131] Had they wished they could have asserted their right to vote, but with Laud in jail and the Root and Branch petition, Ministers' Remonstrance, and other petitions calling for the abolition of episcopacy under debate, they chose to proceed with caution.[132]

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[129] D'ewes (N), p.474.

[130] *Idem*.

[131] *LJ*, IV, 150, 165, 171, 179; Rushworth, *Tryal*, p.41.

[132] D'ewes (N), pp.138-139, 277, 282-283, 307-310,
(Footnote Continued)

The trial opened on March 22 in Westminster Hall. Strafford sat at a small desk with his counsel behind him. The King sat hidden behind curtains at the other end to protect the integrity of the proceedings.[133] St. John remained on the managing committee, but the majority of the evidence was handled by John Glyn and and John Maynard. Geoffrey Palmer, Clotworthy, Pym, and Whitelocke also helped. St. John refrained because on January 29 he had been appointed Solicitor-General, and it was well known that Charles wanted to save Strafford.[134]

St. John's appointment had been made very suddenly, but it came about as a result of attempts by Bedford and Essex to achieve reform by having themselves and some of their associates placed on the privy council. By now the council of the 1630s was no more with the imprisonment of Laud and Strafford, and the flight of Finch and Windebank. For some time in January 1641 rumors had been circulating that the

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(Footnote Continued)
312-315, 335-339, 341-342, 394-397, 412, 459-460, 464-470, 471-472; Baillie, I, 273-274; Rushworth, III-I, 93-96; Timmis, Thine is the Kingdom, p.57; Fletcher, Outbreak, p.92; Brian Manning, The English People and the English Revolution, (Harmondsworth, 1976), pp.16-17.

[133] Baillie, I, 315-316.

[134] Foss, Judges, VI, 479; The Letters, Speeches and Proclamations of King Charles I, (ed.) Charles Petrie, (London, 1968), p.115.

king was considering employing a number of individuals who opposed government policy. It was said that Bedford would be Lord Treasurer, Pym Chancellor of the Exchequer, the Earl of Bristol Lord Privy Seal, George Digby (Bedford's son-in-law) Secretary of State, and Essex Lord Deputy of Ireland.[135] Sir John Temple wrote:

> I do believe some ways are laid upon the bringing in of these new men to make up an entire union between the king and his people, and so to moderate their demands as well as the height of that power which hath been lately used in royal government.[136]

Much of the actual initiative for these changes came from the anti-Strafford faction gathered around the Queen, consisting of Hamilton, Holland, and the Elder Vane.[137] In the end none of these rumored appointments were made. St. John was the only person involved with the opposition group to receive a specific office at this time. On February 14 Bedford, Essex, Hereford, Bristol, Saye, Savile, and Mandeville were appointed to the privy council but given no distinct functions (a few days later Warwick was added as well).[138]

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[135] Manning, "Aristocracy," p.47; Russell, "King's Finances," pp.111-112.

[136] HMC De L'Isle and Dudley, VI, 367-368.

[137] Manning, "Aristocracy," pp.48-54.

In late April the queen was having secret interviews with Pym and Bedford, who had a scheme to reform government finances. They agreed to attempt to save Strafford's life if they would receive their desired appointments.[139] Their acceptance of this offer was not popular with others like St. John and Essex, who worried that unless Strafford were executed he would find some means of seeking revenge upon his accusers.[140] Charles, though, was unwilling to make the appointments until those considered had proved themselves. Clarendon rightly observed that this was a poor decision. Bedford and Pym were unlikely to abandon the support of their friends, or their popularity in parliament without first tasting the fruits of success.[141] As a result, negotiations broke down before the end of April.

Initially St. John's appointment was tied to these others and their ultimate failure makes his success somewhat of a puzzle. The decision to appoint St. John Solicitor was made very quickly. The office had only become available on January 20 when Charles initiated a series of promotions to reward those lawyers and judges who had served him faithfully. Edward Littleton who, as Solicitor, had delivered the crown's argument against Hampden, was raised from the Chief Justiceship of the Common Pleas to fill Finch's office of Lord Keeper. Banks was raised to take Littleton's old position, and Herbert, who had done much in both parliaments to defend the government, was made Attorney-General to replace Banks.[142] It was originally intended that Thomas Gardiner, the Recorder of London, who was loyal to Charles, should become Solicitor. He had previously been in trouble with the house for reprieving the Jesuit John Goodman from the penalty of death imposed upon him by the house, at the instigation of Charles and Henrietta Maria.[143] St. John was only substituted for Gardiner at the last moment. He had, though, been secretly in contact with Henry Jermyn, one of the queen's favorites who was in agreement with the faction advocating the bridge appointments. Jermyn was spending many hours with the king and queen at this point, and must have been influential in obtaining the office for St. John. Bedford also intervened on behalf of his friend.[144]

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[138] Ibid., p.55.

[139] Clarendon, I, 318-319; Gardiner, History, IX, 273; Manning, "Aristocracy," p.56.

[140] Clarendon, I, 319-321.

[141] Ibid., I, 431.

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[142] _Ibid_, I, 279; Foss, _Judges_, VI, 346-347.

[143] D'ewes (N), pp.278-279, 289-290; Manning, "Aristocracy," p.55; Carlton, _Charles I_, p.221.

Charles never explained his action and remained embarrassed by its spectacular failure. St. John did little to serve his king according to the latter's wishes. The move was undoubtedly an attempt by Charles to save Strafford's life. The office of solicitor was the first rung on the ladder for ambitious lawyers who wanted to become part of the judiciary.[145] It was a handsome award, and because the solicitor was considered the legal expert in the commons, Charles might have calculated that this was the place he needed a servant with some influence to help Strafford.

Appointing men who had opposed certain government policies or actions was nothing unusual, and those so appointed usually served the crown faithfully once faced with the difficult problems -and financial rewards- of making the bureaucratic machine work. Both Noye and Littleton had been involved in the opposition to the enforcement of the forced loan. Littleton was a friend of Selden's and in the 1628 parliament he defended the houses' resolutions concerning the Petition of Right, and after the dissolution of the second session he defended Selden before the King's Bench[146]. Noye also wanted to get the Petition of Right through the house and was counsel for Richard Chambers in his Exchequer case over non-payment of tonnage and poundage. There was little in the constitutional ideas of either man that conflicted with the work they did for the government. They both obtained much sought after positions and they assumed the role of advocate for a new client[147]. They were servants, not decision makers like Laud or Finch. Wentworth was another who opposed the government in the 1620s, but was subsequently approached to accept to do service in the 1630s. His motives were more self-seeking; he was interested in obtaining and using power to do what he thought necessary. His rise to power and his dynamic policies seemed to sharply contradict what he had said in the 1620s, and thus he was labelled the great apostate by the Long Parliament while Littleton was left untouched.[148]

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[144] Clarendon, I, 280; HMC De L'Isle and Dudley, VI, 360, 362, 367, 369.

[145] Jones, Politics and the Bench, pp.40-41.

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[146] Foss, Judges, VI, 345.

[147] Jones, "Noye," p.204.

[148] Clarendon, I, 223; Rushworth, III-I, 148, Gordon Goodwin, "Edward Littleton," DNB, XI, 1246-1247.

Clarendon claimed that Charles' motivation for taking St. John on was not different from past practices; the king hoped that,

> ...being a gentleman of an honorable extraction (if he had been legitimate,) he would have been very useful in the present exigence to support his service in the house of commons, where his authority was then great; at least, that he would be ashamed ever to appear in any thing that might prove prejudicial to the crown[149].

Perhaps Charles merely hoped to put a harness on St. John to keep him quiet; but whatever his ultimate motivation the appointment was a grave mistake. Once St. John,

> ...became possessed... of that office of great trust, and was so well qualified for it by his fast and rooted malignity against the government that he lost no credit with his party, out of any apprehension or jealousy that he would change his side: and he made good their confidence, not in the least degree abating his malignant spirit or dissembling it, but with the same obstinacy opposed every thing which might advance the king's service when he was Solicitor as ever he had done before.[150]

The appointment actually gave St. John and his friends a great advantage, for for now he was in a position which, at least on the surface, had the authority of the king behind it, and this must have carried some weight with those who were unsure about the lengths to which the attack on the government was being taken. The appointment also removed any opportunity Charles might have had to moderate events in the commons. The choice of someone like Hyde, Selden, or even D'ewes would have made more sense, even if only Selden was so highly regarded for his legal knowledge. It should have been apparent to Charles that St. John was a different man than those who accepted service in the 1630s. He had never sought office with the government, and his speeches against the prerogative were hardly auspicious. True, the office was open, but so were the positions of Lord Treasurer and Chancellor of the Exchequer, and neither Bedford nor Pym, who were more reasonable, were appointed. Perhaps St. John was intended as a test case. Even so, everything should have spoken loudly against his appointment. Here was a man who had had his papers searched three times, and only two weeks previously made a speech which contained a number of vicious statements about the judges, not to mention the ominous history of Richard II. The judges, he claimed, had murdered the body politic with their decision:

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[149] Clarendon, I, 280-281.

[150] Idem.

> ...it was done year after year in cold blood: one murderous blow, whereupon death follows, is felony, but to multiply wounds upon the dead body, and to come

> again in cold blood to do it, it shows the height of malice.[151]

They had blown dust on the crown; blown-up the laws; and worked to "smear and blemish" the King with "the odious and hateful sin of perjury."[152] Fifty or one-hundred years earlier such talk would have brought St. John to the gallows, or at least landed him in jail, but now he was made Solicitor-General. His appointment was another of Charles' on the spot decisions which should never have been made. St. John's success in lobbying for the office, and Charles' acceptance of him is indicative of the difference in intelligence between the two men and helps to demonstrate why one ultimately lost his head and the other did not.

The proceedings of Strafford's trial have been related elsewhere a number of times, but some important points need to be made.[153] Pym opened the case for the commons with a general speech in response to Strafford's printed defence. He repeated the claim that generally Strafford's treason was an attempt to subvert the law, but fully one third of the speech was taken up by a discussion of the charge that Strafford had used unscrupulous means to raise revenue.[154] Revenue was Pym's pet subject, and Strafford's enforcement of revenue collection a key issue, but the abuses Pym pointed to were minor, and dropped during the trial. Pym ended his speech with the philosophical claim that Strafford was condemned by the light of nature and reason, as well as the rules of common society. He made no specific points about the law, and only dealt with a few of the charges at the start of the trial.[155] The rest of the evidence was handled by the lawyers.

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[151] Mr. St. John's Speech ...Concerning Ship Money, p.40.

[152] Ibid., p.25.

[153] The major treatments are in: Wedgwood, Strafford, ch.4; Timmis, Thine is the Kingdom, chs.4-5; Gardiner, History, IX, pp.302-308, 318-323, 330-335; Stacy, "Matter of Fact," pp.323-348.

At the beginning of the trial, Maynard claimed that treason against the law was the same as treason against the king, for it was the law "that gives that sovereign tie, with which all obedience and cheerfulness the subject renders to the sovereign." He also reiterated St. John's original point that Strafford's treason consisted of an accumulative series of abuses.[156] The two most crucial articles in proof of this theory were numbers fifteen and twenty-three.[157] The first accused Strafford of levying troops and making war against the king's subjects to enforce the collection of revenue, and the second stated that he had told the king he was loosed and absolved from all rules of government so the Irish army could be used in England.[158] The other charges included his enforcement of knighthood fines as Lord President, the charges against Mountnorris, monopolies in Ireland, his numerous harsh statements, the enforcement of ship money, his use of paper petitions, and abuses in the Castle Chamber.[159]

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[154] Rushworth, Tryal, pp.27, 103, 105-106.

[155] Ibid., pp.75, 114-116, 120, 124.

[156] Ibid., p.129.

Strafford was quite successful in defending himself against the charge that these crimes were treasonous. He conceded they were misdemeanors which could not be brought together under existing law to form a general treason.[160] But his stubborn righteousness, and avowal that his actions were correct and beneficial to the king did nothing to improve his popularity. He claimed that while Lord President he had not said to the justices at the York assizes that the king's loins were heavier than the law, but just the opposite. This conjured up a faintly ridiculous image of both the King and the law.[161] He continued to boast about his success in raising the King's revenue to such heights, and made no denial of the purpose for which he had brought people into Castle Chamber. He merely claimed that nothing he had done was outside the law.[162] Most damaging was his repeated claim that his proceedings in Ireland at Council Board and in Castle Chamber against individuals and charters were justified by martial law because Ireland was a conquered nation.[163] This only increased the fear that Strafford wanted to bring the Irish army into England to deal with opposition. In one speech, he went so far as to expound a theory of the state which echoed the words that had made Finch so unpopular:

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[157] Stacy, "Matter of Fact," p.326.

[158] Rushworth, Tryal, pp.426, 518.

[159] Ibid., pp.61-75.

[160] Ibid., pp.160-161.

> ...if the propriety of the subject, as it is, (and god forbid but it should continue) be the second, undoubtedly the prerogative of the crown is the first table of that fundamental law, and hath something more imprinted upon it: for if it hath a divinity imprinted upon it, it is God's anointed; It is he that gives the powers. And King's are as gods on earth, higher prerogatives than can be said, or found to be spoken of the propriety or liberty of the subject... the prerogative, as long as it goes not against the common law of the land, it is the law of the land...[164]

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[161] Ibid., pp.150-151.

[162] Ibid., pp.118-121, 125.

[163] Ibid., pp.160-163.

[164] Ibid., p.182.

Not surprisingly, the commons grew restless in the face of this testimony. At one point Strafford called upon his friend Sir William Pennyman as a witness. Pennyman was widely suspected of saying all that Strafford wanted to hear, and when Maynard caught him in a contradiction the commons began hissing to such a degree that Pennyman left the stand weeping.[165] One observer noted that the commons had so "banged" and worried the Earl that it made many pity him.[166]

The commons were even more upset when it became apparent that their case was not making any headway with the lords. Strafford's denial of the existence of cumulative treason was convincing; so too was his defence against the fifteenth charge. He argued that his use of soldiers to enforce the collection of taxes and to evict families who had not paid their rent could not be construed as a levying of war against the king's subjects under the provisions of 25 Ed. III.[167] The soldiers, he stated, were used against disobedient subjects to enforce his policy, and never brought together in large numbers. To counter this Palmer brought forward sergeant Robert Savile who claimed he had a warrant proving that Strafford had ordered large numbers of soldiers be billeted upon certain individuals merely as punishment. But he only had a copy of the warrant and the lords refused to allow it as evidence. This left him as the only witness, and two witnesses were needed under the law.[168]

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[165] Baillie, I, 321.

[166] HMC Various, II, 261.

[167] Rushworth, Tryal, pp.440, 449, 450-451, 458.

The twenty-third article was more serious. Both the Earl of Northumberland and Sir Henry Vane testified that Strafford had advised the king to dissolve the Short Parliament, and told him that with its failure he was loosed and absolved from the rules of government. Vane further testified that he had heard Strafford advise the king to use the Irish army in England.[169] If this could be proven it would be the most damaging evidence for it clearly implied a levying of war. Strafford denied using the words, and claimed that statements made in haste were not serious evidence. He asserted that he only told the king he was willing to help him raise supplies.[170] Again the commons were stuck with only one witness who had to be prompted by his son to testify. To make matters worse, Vane demonstrated that his memory of whether Strafford had said,the army should be brought "here" (meaning England) or "there" (meaning Scotland) was not clear.[171] Glyn claimed that vox populi was good enough to be the second witness, but this was not accepted by the lords.[172]

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[168] Ibid., pp.427-429, 436, 439; Stacy, "Matter of Fact," pp.327-328.

[169] Rushworth, Tryal, pp.546-547; Stacy, "Matter of Fact," p.31.

[170] Rushworth, Tryal, pp.544-545, 550-551, 561.

From this point on Strafford won more sympathy with the lords each day.[173] The commons had successfully shown that Strafford had governed in an authoritarian manner, and had made a number of wild statements which reflected badly on the law, but they were unsuccessful in proving that this was treason according to the law. The treasons in the statute of 1352 were based on the concept that the state was embodied in the person of the king, and because Strafford was a loyal subject this created a great difficulty.[174] At one point Whitelocke claimed that Strafford's intent had been to create a division between the king and his people by setting up an arbitrary government, but for the most part the commons' managers made no attempt to argue their charges as a matter of law.[175] This left the advantage with Strafford, and the one charge the commons could have pressed with considerable success suffered from a lack of evidence.

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[171] Ibid., pp.544-546, 565.

[172] Ibid., p.580.

[173] Baillie, I, 330.

[174] SR, II, 329.

The commons' frustration with Strafford's defence came to a head on April 10. On the eighth the commons had indicated that they were finished with the individual articles, and now Strafford was to present his final defence. But Glyn interrupted to provide fresh evidence of Strafford's intent to bring the Irish army into England. This was to be a copy of a letter in which Strafford outlined his plans, which the younger Vane had found in his father's study (it was this that had prompted his father to give evidence in the first place).[176] Strafford objected, stating he would only be amenable to Glyn's proposal if he were allowed to bring in new evidence also. After two lengthy debates the peers resolved that if Glyn wanted to present his new evidence, Strafford too should be allowed to bring forward articles for further discussion. Glyn reluctantly agreed and asked Strafford what articles he wanted to re-examine. Strafford began reciting a whole list, but before he could finish,

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[175] Rushworth, Tryal, p.577.

[176] Baillie, I, 345.

> ...the commons, on both sides of the house rose in a fury, with a shout of Withdraw! Withdraw! Withdraw! got all to their feet, on with their hats, cocked their beavers in the King's sight. We did all fear it should go to a present tumult. They all went away in confusion; Strafford slipped away to his barge, and to the Tower, glad to be gone lest he should be torn to pieces...[177]

That afternoon the commons returned to their own house and Pym revealed the copy of the letter Vane jr. had found. This caused some stir, and much astonishment on the part of the elder Vane, who was unaware of the existence of the copy, but ultimately this was not new evidence and would not help much.[178] Then, late in the day, Sir Arthur Haselrig read a bill of attainder against the Earl which had already been prepared.[179] Haselrig was a friend of both Pym and St. John, and here he almost certainly presented a bill drawn up by St. John. St. John could not present the bill himself because he was Solicitor, so he got Haselrig to do it for him. Haselrig later introduced St. John's militia bill for the same reasons.[180] St. John had never been convinced that Strafford could be successfully prosecuted at formal impeachment trial, and now his fears that the bulk of the lords were on Strafford's side were vindicated. The time seemed ripe to press forward with a bill of attainder.

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[177] Baillie, I, 346.

[178] Clarendon, I, 301-306.

[179] C.J., II, 118.

Before the bill could be debated the commons decided to hear Strafford's final speech. In an impressive display of rhetoric Strafford again attacked all the weaknesses in the common's case. He called their charges a new, manufactured law of treason, and stated he would rather live under bare will and pleasure with no law at all before he would endure such practices.[181] He was aware that St. John was preparing to push a bill of attainder through the house, for he ended with a prophetic plea urging the lords not to retrieve the precedent of the Merciless Parliament:

> My lords, it is now full two hundred and forty years since any man ever was touched to this height, upon this crime, before my self. We have lived my lords happily to ourselves at home.... let us be content with that which our fathers left us, and let us not awake those sleepy lions to our own destruction, by rattling up of a company of records, that have lain for so many ages by the wall, forgotten, or neglected.[182]

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[180] Clarendon, I, 365-366.

[181] Rushworth, Tryal, p.659.

[182] *Ibid.*, pp.659-660.

> ...they may sometimes tear your posterity in pieces. It was your ancestors' care to chain them up within the barrier of a statute ...the shedding of my blood [may] make a way for the tracing of yours...[183]

> ...the inconveniences and miseries that will follow upon this, will be such, as it will come, within a few years, to that which is expressed in the statute of Henry the Fourth, it will be of such a condition,[184] that no man shall know what to do, or what to say.

This speech even impressed Whitelocke. It was left to Glyn to reply. But after half an hour's preparation he could do little more than repeat the evidence the commons had gathered.[185] After speaking for two hours he tired and Pym took over. Pym explained the horrible possibilities of arbitrary government and why he thought an attempt to set it up was treason, but he did not back up his argument with any legal points.[186] Typically, he was not well organized and soon had to give up. This brought the speeches to a close.

The next day, April 14, debate resumed in the commons on the bill. The house was divided over what to do. Many like D'ewes believed the proper way to proceed would be to demand judgement. D'ewes wanted to see Strafford executed, but he was tender when it came to the law, and attainder had the reputation of being an arbitrary proceeding.[187] Others proposed that one of the managers should present a speech to the commons on matters of law so they could decide. St. John protested that it would be dangerous to make such a speech before the bill had passed because Strafford's counsel might hear about it, and then a reply could be made. As debate continued D'ewes remarked that he was amazed to see how much support there was for Strafford. Finally St. John was prevailed upon to explain the legality of Strafford's conviction. He made an elaborate argument emphasizing that in Strafford's case attainder should be used according to the salvo clause of 25 Ed. III which declared that all cases of treason which could not be dealt with under the statute should be decided by parliament.[188] This was the same clause that had been so important in the Appellant's case, and by using it St. John demonstrated he had a tight grip on Strafford's slumbering lions.

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[183] CSPD 1640-1641, p.543. This is a second version of the speech found in a letter endorsed by Secretary Nicholas. The passage quoted here is from Strafford's closing remarks, which are much more detailed in this version.

[184] Rushworth, Tryal, p.660.

[185] Ibid., pp.706-733; Whitelocke, Memorials, I, 128.

[186] Ibid., pp.661-670.

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[187] Baillie, I, 348; See below, pp.

[188] Harl. 163, f44a, f45a; CJ, II, 120; Whitelocke, Memorials, I, 129; Rushworth, Tryal, p.47.

On April 16 the house was forced to consider whether it was going to allow Strafford's counsel to speak to matters of law before they had finished debate on attainder because of a request from the Earl. The lords had already agreed to the proposal, but the commons asked for a postponement; to which the lords assented. After this both Pym and Strode rose to oppose going any farther with the bill. They urged that the trial be carried through to its conclusion, and that Strafford's counsel be heard. Pym had shown before that he was not in favor of using attainder, and it was at this time that he and Bedford were trying to make their deal with the king.[189] St. John offered his cautious friend a sharp rebuke. He was,

> ...absolutely against going into Westminster Hall this morning or at any other time as a committee or in any other capacity if we intend to proceed by bill of attainder, for it may be some prejudice to that legis late power we have, to go to hear his counsel speak to a matter of law upon a mere message of the lords sent to us so unseasonably as yesternight at 5 of the clock. But the ancient use hath been when this house went by bill of attainder, that the counsel of the person to be attainted if he desired it might be heard at the bar here.[190]

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[189] CJ, II, 121; Harl. 163, f.47a (YCPH Typ); Clarendon, I, 319-320; Stacy, "Matter of Fact," p.331.

[190] Harl. 163, f.48a (YCPH Typ.).

This did not affect Pym or Strode, who continued to urge strongly that Strafford's counsel be heard. A day later, Hampden supported them, and together they were able to convince the house to hear the Earl's counsel on April 17.[191]

Richard Lane, prince Charles' Attorney-General made a short speech for Strafford upholding the Earl's previous claims. As St. John feared he had received word of his speech, for he incorrectly claimed that the first parliament of Henry IV had repealed the salvo clause of 25 Ed. III for all time to come. 1 Hen. IV, in reality, only repealed the actions of the parliament of 1398 which Richard had used to counter attack the Appellants with his own appeal against them. Chapter four of this statute actually confirmed the proceedings of the Merciless Parliament, as might be expected considering the circumstances through which Henry IV came to power.[192]

For three days following (the 19th to the 21st) the commons engaged in hot debate over the bill. On the nineteenth St. John fell ill, but was called for after

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[191] Harl. 163, f.48a, f.52a (YCPH Typ.); CJ, II, 122; Rushworth, Tryal, p.49.

[192] Ibid., p.674; SR, II, 12-14.

Falkland spoke against the bill, and he arrived just in time to defend it against Selden, and his old associate Holborne.[193] He seems to have been considered the driving force behind the bill by its other supporters. Before the debate was over Lord Digby, who been one of the government's harshest critics when parliament opened, made a speech against attainder. Although he had been involved in the prosecution of Strafford, he made an about face and declared he had only been prepared to believe Strafford guilty if Vane's evidence held up. Now he had seen the faultiness of it and had changed his mind. This was an excuse. In his speech he expressed the most pressing reason for his change of heart:

> ...neither the lords nor the king will pass the bill, and consequently that our passing it will be a cause of great divisions and combustions in the state.[194]

Despite Digby's speech and the opposition of respected lawyers like Selden and Holborne the bill still passed by a comfortable margin of 204 to 59 votes.[195]

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[193] Harl. 163, f.69a (YCPH Typ.); Verney's Notes of the Long Parliament, (ed.) John Bruce, Camden Society 31 (1845), pp.52-55.

[194] Rushworth, Tryal, pp.50-53.

[195] Ibid., p.54.

Those that did vote against the bill came under immediate attack. On the twenty-second posters appeared all over London with their names. They were labeled enemies of their country and betrayers of justice who would be punished.[196] The speed with which this was done means it must have been organized by some members of the house who had knowledge of the vote. Two days later a petition was brought to parliament blaming Strafford for all the ills of the kingdom, and calling for his death. It was allegedly signed by 20,000 people.[197] On the twenty-sixth debate began in the house of lords, and unhappiness was expressed that the commons had chosen to put a halt to the trial in this manner. A number of the lords complained that the commons were encroaching upon the liberties of the upper house, and that they did not know their duties. It was implied that only the peers could try another peer. The whole house agreed to indicate to the commons that their ordinances had been much disobeyed and contempted.[198] The lords resolved that before they could enter into debate on the bill they would have to hear the commons argue the legality of it.[199] This task inevitably fell upon St. John who was assigned to present an argument of law before a committee of both houses in Westminster Hall on the morning of the twenty-ninth. Strafford would be present, but would not be allowed to say anything.[200]

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[196] Verney's Notes, pp.57-58.

[197] Rushworth, Tryal, pp.55-57.

[198] Baillie, I, 348-349; CSPVen 1640-1642, p.141.

Clearly this was to be the most important speech of either the trial or attainder debate. The lords' major objection to the commons' case up to this point was that they had not legally proven Strafford guilty. Now it was up to St. John to prove that attainder was a method which would do just that. He began by outlining the legal powers of parliament:

> My lords, in judgement of greatest moment, there are but two ways for satisfying those, that are to give them; either the Lex Lata, the law already established, or else the use of the same power for making new laws, whereby the old at first received life In the first consideration of the settled laws, in the degrees of punishment, the positive law, received by general consent, and for the common good is sufficient, to satisfy the conscience of the judge...[201]

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[199] Paul Christianson, "The 'obliterated' portions of the House of Lord's Journals dealing with the attainder of Strafford, 1641," English Historical Review 59 (1980), pp.343-344.

[200] Rushworth, Tryal, p.58; Christianson, "The 'obliterated' portions," p.345.

[201] Rushworth, Tryal, p.676.

But because the old laws were different in various parts of the land:

> ...the same law gives power to the parliament to make new laws, that enables the inferior court, to judge according to the old. The rules that guide the conscience of the inferior court is from without, the prescripts of the parliament, and of the common law; in the other, the rule is from within, that Salus populi be concerned, that there be no willful oppression of any of the fellow members, that no blood be taken than what is necessary for the cure, the laws and customs of the realm as well enable the exercise of this, as of the ordinary and judicial power.[202]

This explanation of parliament as the guardian of the public good prepared the ground for St. John's major point: that the use of attainder was justified by the salvo clause of 25 Ed. III:

> ...in all former ages if doubts of law arose of great and general concernment the parliament was usually consulted withal for resolution, which is the reason that many acts of parliament are only declarative of the old law, not introductive of a new... if the law were doubtful... they perceived the parliament (where the old way is altered, and new laws made) the fittest judge to clear this doubt.[203]

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[202] Idem.

[203] Idem.

This freed the commons from the strict wording of the statute, and it made the commons equal to the lords and king in power of judgement.

To remain consistent with his theory of parliamentary sovereignty St. John stated that if they chose to do so the commons could have used their "mere legislative power" to declare Strafford guilty in a just and legal way. But in this case parliament's legislative function was secondary, because it was entirely possible to convict Strafford under the existing laws using the judicial function of parliament. The salvo clause of 25 Ed. III allowed each member of parliament to judge the evidence according to their own consciences. For instance Vane's single testimony,

> ...might be sufficient to satisfy private consciences, yet how far it would have been satisfactory in a judicial way, (where the forms of the law are more to be stood upon) was not so clear; whereas in their way of bills private satisfaction to each man's conscience is sufficient, although no evidence had been given in at all.[204]

Strafford could not be justly convicted, but the commons had proven he was dangerous enough to convict him by interpreting the law in a slightly less rigid fashion. St.

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[204] Ibid., pp.677.

John now had to show just how close Strafford's actions were to statutory treason.

He argued this carefully because his interpretation of attainder differed radically from what his contemporaries thought of it. St. John, who based his ideas on research into the Fourteenth and Fifteenth-centuries, was correct to think it was an outgrowth of the salvo clause of 25 Ed. III.[205] In the Seventeenth-century, though, acts of attainder had the reputation of being arbitrary and extrajudicial. This was almost solely due to a great many attainder acts drawn up by Henry VIII to enforce the reformation. The majority of these were truly arbitrary proceedings. Acts of attainder used by Henry and his parliaments before 1531 had been in keeping with Fifteenth-century practice, but after this date, as a result of Cromwell's policy, attainder became an instrument to execute people on order of parliament without any process, and with only the flimsiest of evidence.[206] The first to be so attainted was Richard Roose, a cook who had mixed poison into the food prepared for bishop John Fisher's household.

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[205] Bellamy Law of Treason, pp.180-182; Stanford E. Lehmberg, "Parliamentary Attainder in the reign of Henry VIII," Historical Journal 18 (1975), pp.675-676.

[206] Ibid., p.681.

Without any trial he was attainted by parliament ten days later and ordered boiled alive.[207] In this act there was no indication that Roose's crime presented any danger to either the King or commonwealth.[208] The next such attainder was the act directed against Elizabeth Barton, the Holy Maid of Kent, who had apparently prophesied the death of Henry in a dream if he should continue with the divorce of Katharine Howard.[209] For this she was executed. The bill was designed by Cromwell to function as propaganda to make the act appear more palatable. It was framed as a petition from the members of both houses to create an impression that there was a general clamor against Barton and the other offenders associated with her, whereas in reality parliament merely approved the bill.[210] Altogether, from 1531 to 1547 sixty eight people were condemned for treason by acts of attainder and 34 were executed. Attainder was used only sparingly throughout the remainder of the Tudor century, but Henry VIII's and Cromwell's policy had left an indelible mark.[211]

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[207] William R. Stacy, "Richard Roose and the use of Parliamentary Attainder in the Reign of Henry VIII," Historical Journal 29 (1986), pp.1-3.

[208] SR, III, 326.

[209] Ibid, III, 446ff.

[210] Lehmberg, "Parliamentary Attainder," pp.681-683.

[211] Ibid., p.702; Stacy, "Richard Roose," pp.13-14.

In his Fourth Part of the Institutes Coke, citing what Sir John Gawdye had once told him about Cromwell's use of attainder, stated that although attainder "standeth in force of law," it was a practice which should not be resorted to because:

> No man ought to be condemned without answer.... Doth our law judge any man, before it hear him and know what he doth?[212]

Parliament was no place for the type of arbitrary proceedings Henry had used:

> ...the more high and absolute the jurisdiction of the court is, the more just and honorable it ought to be in the proceeding, and to give example of justice to inferior courts.[213]

Others had a similar impression of attainder. Digby, in his speech, equated it with murder, claiming "he that commits murder with the sword of justice, heightens that crime to the utmost."[214] Holborne worried that there was a great danger in leaving a declaratory power in parliament.[215]

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[212] Coke, Fourth Institute, p.38.

[213] Ibid., p.37.

[214] Rushworth, Tryal, p.53.

[215] Verney's Notes, p.55.

To prove to the lords that Strafford's crimes were extremely close to those laid out in the statute St. John began with the charge about the billeting of soldiers. He argued more carefully than the managers who spoke at the trial that war intended to alter the laws or government was war against the King because he maintained and protected them. They were his laws, and exorbitant offences were said to be done against the King's peace, though not intended against his person.[216] To support this idea St. John drew on a number of precedents beginning with the case of Sir Thomas Talbot.[217] Talbot was declared to have committed high treason for conspiring the deaths of the Dukes of Glouchester and Lancaster. This was said to have been done against the King's person and realm by a levying of war tending to the destruction of the realm, even though Talbot had no intention of killing the King.[218] St. John also claimed that the Peasants' Revolt of 1381 was not aimed to overthrow the King, but indictments of treason were still handed down. The peasants took an oath to be true to the King and commonwealth, promising not to steal anything. Their only intent was to,

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[216] Rushworth, Tryal, p.679.

[217] Ibid., p.680.

[218] Bellamy, Law of Treason, p.113.

> ...establish the laws of villainage and servitude, to burn all the records, to kill the judges.[219]

More pertinent was his use of the judgements of treason given against the London apprentices in 1595 and the Oxfordshire rebels in 1597. A number of the leaders of the London apprentices were executed as traitors for organizing a group of about 200 people on Tower Hill to deliver a number of their colleagues who had been sent to prison by Star Chamber for rioting. The apprentices also planned to kill the Lord Mayor, and with this aim they set forth carrying a coat upon a pole to the sound of trumpets before being stopped by sheriffs and others. For this they were charged with compassing war, rebellion, and insurrection against the queen. Here treason was said to be made against her government and policy. No threat against her life was intended.[220] Similarly, St. John pointed out, in 1597 Richard Bradshaw and Robert Burton were charged with treason on the same grounds for intending to organize riots to throw down inclosures throughout the country. Before this, such riotous actions had always been prosecuted as felonies, but these decisions expanded the concept of levying war against the sovereign well beyond the person of the monarch to include such behavior by placing a greater emphasis on the law and government.[221]

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[219] Rushworth, *Tryal*, p.680.

[220] *Ibid*., pp.680-681. The words of the judgement against the apprentices clearly demonstrates this. It said they did "*intende de levy quer pur ascun choce que le Roigne per son ley ou Justice doit ou poit faire en government come Roign ceo sevra intend de levoir querr counter le Roigne & nest materiall si ils ne intende ascun male all person le Roigne mesque s'ill intende contra le office & auctorite dell Roigne de levie querr ceo est deins les parolls & intent de le dit estaute*." *English Reports* (123) 2 Anderson, p.516.

The man most responsible for this new interpretation was Coke, who had been the queen's Attorney-General at the time.[222] St. John was undoubtedly in possession of Coke's papers, which the commons had secured from the government on the thirteenth of February. Here Coke interpreted the intent of the Oxfordshire rebels to be an usurpation of the royal authority because it was a challenge to the laws of the land. This, he claimed, fell under the provisions of 25 Ed. III.[223] These cases certainly stretched the law but they were still valid precedents, and they had the authority of Coke behind them. St. John was on firm ground when he claimed:

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[221] Rushworth, Tryal, pp.680-681; English Reports (79) Popham, p.1227; Bellamy, Tudor Law of Treason, p.79; John Walter, "A 'Rising of the People'? The Oxfordshire Rising of 1596," Past and Present 107 (1985), pp.125-132.

[222] Idem.

[223] Edward Coke, The Third Part of the Institutes of the Laws of England, (London 1648), pp.9-10.

> So... if the end of it be to overthrow any of the statutes, any part of the law and settled government, or any of the great offices entrusted with the execution of them, this is a war against the King.[224]

Turning to the evidence which had been presented to demonstrate the fifteenth charge, St. John showed why the use of soldiers against the subjects—in Ireland was an attempt to overthrow the latter's rights and the settled pattern of government. It was not the number of soldiers that mattered, but the fact that the army was used where it should not have been:

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[224] St. John also cited the example of the sentences of treason handed down by the Merciless Parliament, and the judgement given against three men in the eighth year of Henry VIII for an attempted insurrection against the statute of labourers. The latter was undoubtedly again taken from Coke, and the former was not elaborated upon here because St. John was concerned to assert the commons' right to pass judgement. Rushworth, *Tryal*, pp.680-681; Coke, *Third Institute*, p.10. St. John did not draw upon the articles of treason given against Empson and Dudley, but he might have. These two men were Henry VII's unpopular and unscrupulous money collectors whom Henry VIII decided to dispose of on his accession to make himself popular. Empson was accused of high treason for having, "...*prae oculis non habens, sed ut filius diabolicus subtilit. imagnans honorem, dignitatem, & prosperitatem dicti nuper Regis ac prosperitatem Regni sui Angliae minime valere, sed ut ipse magnis angulares favores dicti nuper Regis adhiber. unde magnat. fieri potuisset ac totum Regnum Angliea secundum ejus voluntatem gubernar. falso deceptive & proditor. Legem Angliae subvertens diversos ligeos ipsius nuper Regis ex sua falsa covina & subtil. ingenio contra communem Legem Regni Angliae de diversis feloniis murdr. & aliis articulis & offens. per ipsum Richardum tuue suppositis indictari fecit ac indictar*...." Perhaps St. John chose not to cite this case because many of the actual charges were invented by Henry VIII, and because the actual trials of Empson and Dudley were unfair. *English Reports* (123) 1 Anderson, p.405; *Jasper Ridley, Henry VIII, (London, 1984), pp.42-43;* Geoffrey Elton, *Reform and Reformation*, (London, 1977), pp.1-2, 35.

> ...under the awe of the whole army, six may force more than sixty without it...[225]

The army was used to enforce Strafford's will without command of the law (posse Exercitis instead of posse comitatus), to the detriment of the subject's rights.

St. John next attempted to show that Strafford's actions indirectly compassed the death of the King, which was treason under the statute of 1352.[226] he argued this point from two different angles. The first was simply one of his metaphors, which was more notable for its thinly veiled warning to the King than as a point of law:

> ...it was an attempt not only upon the Kingdom, but upon the sacred person and his office too; himself was hostis patriae, he would have made the father of it so too: Nothing more unnatural nor more dangerous than to offer the King poison to drink; telling him it is a cordial is a passing of his death: the poison was

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[225] Rushworth, Tryal, 683.

[226] SR, II, 319-320.

> repelled, there was an antidote within; the malice of the giver beyond expression.[227]

The second was more elaborate, and developed at greater length:

> ...it is a compassing the king's death by words, to endeavor to draw the peoples' hearts from the king, to set discord between the king and them, whereby the people should leave the king, should rise up against him, to the death and destruction of the king.[228]

Strafford did this by slandering the commons, claiming they had denied to supply him in the Short Parliament, and by advising him he was free from the rules of government and could use the Irish army. All of Strafford's arbitrary proceedings in Ireland also had the cumulative effect of removing the subjects hearts from the king.[229] In elaborating this theory, St. John talked freely about the king's person. He stopped short of actually saying the king had been involved in any arbitrary proceedings (this might have been treason in itself), but he was not above threatening him with violence. Strafford's actions were done with the intent,

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[227] Rushworth, Tryal, p.685.

[228] Ibid., p.686.

[229] Ibid., pp.687-688.

> ...to withdraw the peoples' affections from the king, to excite them against him, to cause risings against him by the people, in mortem & destructionem of the king.... To counsel a king, not to love his people, is very unnatural, it goes higher to hate them, to malice them in his heart, the highest expressions of malice, to destroy them by war. These coals they were cast upon his majesty, they were blown, they could not kindle in that breast.[230]

Quite apart from the legal argument here, the implication was that Strafford's policies had made the government so unpopular that the people might rise up and destroy it, and the king, if something were not done to atone for his actions. It was no accident that St. John mentioned the Peasants' Revolt twice and also three Tudor precedents which involved violence against the government.[231] This threat was also directed against the lords. The intent of the Peasant's Revolt had been to eliminate all ranks of men:

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[230] Ibid., p.687. By this time Charles had suffered a great deal of abuse from his counsellors in St. John's metaphors. Ostensibly used to demonstrate Charles' innocence, they were more notable for a streak of sadistic cruelty. First, Charles' judges threw dust (a common symbol of death) on his crown, and then smeared and blemished him with perjury. After this, Strafford tried to poison and incinerate him. Charles must have wondered what his Solicitor was getting at.

[231] Ibid., pp.680-681.

> ...no peerage; no ranks or degrees of men; the same condition to all.[232]

It was not by chance that crowds started demonstrating outside of Westminster after St. John's speech was over.[233] At different times during the next two weeks thousands gathered outside the house of lords and Whitehall demanding Strafford's death. Pym has been associated with these demonstrations and there is no good reason to assume St. John was not involved as well. There is no direct evidence to link either of them to the demonstrations apart from what St. John said in his speech; contemporaries, however, were aware that there was some connection.[234] The Londoners had their own grievances, and their initial animosity was directed against the bishops, but Strafford was hardly popular and the trial focused attention on him. Given this situation it would have been easy for the opposition leaders to spread the word that people were needed at Westminster to help the "good party" against Strafford.[235]

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[232] Ibid., p.702.

[233] John Nalson, An Impartial Collection of The Great Affairs of State, (London, 1682-1683), II, 187-188; Manning, English People, pp.13-33.

[234] Ashton, Civil War, pp.149-151.

[235] Manning, English People, pp.17-21.

These threats were menacing glances cast through the web of St. John's argument. While making them he was still arguing a point in law. The idea that it was treason to withdraw the peoples' affection from the king, or vice versa, thus creating a division in the kingdom had been used many times in the past. It formed part of the charges against Gaveston and the Despensers and was also used in the appeals of 1388.[236] It was used in a number of more typical cases of treason, some of which St. John cited. One was the case of John Sperhauk, who was convicted of treason in 1402 for telling people the Earl of March was the rightful king. He was charged with exciting the people against the king.[237] Other precedents cited were Owen's case of 1626, the Duke of Norfolk's case, and the attainder of Elizabeth Barton.[238] Barton had been accused of "intent to make a common division and rebellion in this realm to the great pearl and danger of our said sovereign lord."[239]

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[236] Rot. Parl., I, 283, III, 230.

[237] Rushworth, Tryal, p.686; Bellamy, Law of Treason, pp.116-117.

[238] Rushworth, Tryal, pp.685-686, 704. For a discussion of Barton's and Norfolk's cases see, Bellamy, Tudor Law of Treason, pp.64-67, 81,155-156, 161-162.

[239] SR, III, 327. For a number of other precedents cited by St. John see Verney's Notes, pp.62-63. Empson was also charged with making the king unpopular and so endangering his life. English Reports (123) 1 Anderson, p.406.

Although these precedents more than adequately proved St. John's point in law, the implication of what he was saying went beyond their meaning; even beyond the examples of 1308, 1321, and 1388. In these latter cases the crown's opponents never stated they themselves were placing the crown in mortal danger; their rebellions were "popular' only in a very limited sense. But, following his speech St. John actively abetted demonstrations against the king and government. His implication was that these demonstrations were not the same as the cases of 1595 and 1597 because here the action was not aimed against the government, but for it. Strafford's actions were treason because he had attempted to implicate the king in his arbitrary subversion of the law. This meant that the people would have to rise to save their rights and kill the king if necessary. It is only a short step from this idea to Henry Parker's notion that the subject can rebel to regain liberty, and not far from John Locke's theory of rebellion.[240]

After finishing with the great statute of treasons St. John presented a lengthy discussion where he argued that Ireland had its own statutes and common laws, but also fell, in matters of dispute, under the jurisdiction of the central courts at Westminster -including parliament. Strafford's claim that his use of martial law could be justified because Ireland was a conquered nation was refuted.[241]

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[240] Parker, Observations, p.169; John Locke, Two Treatises on Government, (ed.) Peter Laslett, (New York, 1963), pp.449-453, 455-456, 466-467.

St. John also attempted to show that Strafford's actions were treason at common law. He himself was convinced about the authority of statute, but others were not so he had to cover all the bases. He said 25 Ed. III had not taken away older definitions of treason, only collected them together. This was true as far as it went, but most of the older definitions had originated in parliament. There was no real common law idea of treason, it was largely a Tudor invention used to back up some of their dubious prosecutions.[242] It is not surprising that St. John did not belabour this point. He cited no precedents, and reverted to Pym's style of argument, claiming that there was no need to prove the obvious. The common law was formed by society for its own protection, and thus the safety of the common law was equivalent to the safety of the realm:

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[241] Rushworth, Tryal, pp.689-699.

[242] Bellamy, Tudor Law of Treason, pp.10, 47, 56-57; Stacy, "Matter of Fact," p.338.

> ...if there be any common law treasons at all left; nothing is treason, if this be not, to make a kingdom no kingdom; take the polity and government away, England's but a piece of earth, wherein so many men have their commorancy and abode, without ranks or distinction of men, without property in anything further than possession, no law to punish the murdering, or robbing one another.[243]

Finally, parliament's legislative power could be used if any of the lords were still doubtful of Strafford's treason in law:

> ...the parliament is the great body politic, it comprehends all, from the king to the beggar; if so, my lords, as the natural, so this body, it hath power over itself, and every one of the members, for the preservation of the whole; It's both the physician and the patient; If the body be distempered, it hath power to open a vein, to let out the corrupt blood for curing itself, if one member be poisoned... it hath power to cut it off for the preservation of the rest.[244]

At this point St. John made his statement about hitting foxes and wolves on the head, but even this does not fully deserve the reputation for arbitrary violence it has gained. It was violent, and meant to be dramatic, but the notion behind the metaphor was the old common law idea of notoriety. A notorious criminal who was popularly known in his locality could be declared an outlaw through popular clamor.[245] To conclude he simply listed a number of occasions when attainder had been used to convict people of crimes that did not fall under 25 Ed. III.[246]

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[243] Rushworth, Tryal, p.699.

[244] *Ibid.*, p.702.

This speech not only brought silence to the Hall, it also began to worry Charles. To this point he had taken no part in the proceedings, content with the knowledge that the growing division between the two houses had worked to Strafford's favor, with most of the lords finding the common's case too weak.[247] But two days after St. John's speech the king came to parliament to plead for Strafford's life. Before both houses Charles spoke plainly that in his conscience he could not find him guilty of treason, only misdemeanors. He was undoubtedly concerned that it was his Solicitor that had made this speech. Strafford he claimed had never advised him to alter any laws, or use the Irish army in England. He offered to remove Strafford from his service if the charges of treason were dropped.[248] After this speech the commons returned to their house in a bad mood, annoyed with the king for breaking the rules of privilege. Tempers were hot and Pym moved for an adjournment to Monday.[249]

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[245] T.F.T. Plucknett, "The Origin of Impeachment," Transactions of the Royal Historical Society, Fourth Series 24 (1942), pp.60-61; Plucknett, "The Impeachments of 1376," Transactions of the Royal Historical Society, Fifth Series 1 (1951), pp.154, 156-157; Bellamy, Law of Treason, p.179.

[246] Rushworth, Tryal, pp.704-705.

[247] CSPVen 1640-1642, p.141.

[248] Rushworth, Tryal, p.734.

On Sunday night the news spread that Captain Billingsly had presented himself at the Tower with 100 soldiers and demanded admission earlier in the day. He was refused entry by Sir William Balfour, the Lieutenant of the Tower, but rumors that the king might help Strafford escape were now proven.[250] The next morning five to ten thousand people thronged to Westminster carrying swords, cudgels, and staves. As the lords arrived to enter their chamber they were surrounded by people yelling Justice! Justice! and demanding Strafford's execution.[251] Once assembled the lords sent to discover why the crowd had gathered, and they were told the people wanted a reply to their petition of the twenty-first. John Lillburne who was in the crowd that day claimed that if the people did not have Strafford's head they would have the King's.[252] Meanwhile the commons gathered in their house, most not knowing what to make of the king's attempted seizure of the Tower, nor the action of the crowd outside. Nothing was said until the clerk began reading a bill for the regulating of the trade of wiredrawing. Before he could finish he was overwhelmed by a cascade of laughter at the inappropriateness of this subject.[253] After another period of silence Alderman Pennington rose to tell the house that Sir John Suckling, a courtier of the queen's faction, had been in a tavern with 60 armed men on Sunday waiting to help Strafford escape. Pym raised the question of a popish plot and complained that the king's breach of privilege on Saturday indicated he was still under the influence of evil counsel. The house remained sitting from seven in the morning to eight at night and by the end of the day they had decided upon, and drawn up a protestation to maintain the reformed religion, allegiance to the king's person, the privileges of parliament, the rights and liberty of the subject, and to oppose and punish any who by force or counsel should do anything contrary to the protestation.[254]

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[249] Clarendon, I, 336; Baillie, I, 351.

[250] Earlier Strafford had offered Balfour 20,000 pounds to help him escape, most likely at the instigation of Charles who wanted to free him and leave with him to take charge of the army in the north. Rushworth, III-I, 238, 253; CSPVen 1640-1642, p.149; HMC Portland, I, 719; Whitelocke, Memorials, I, pp.133-134; S.R. Gardiner, "Plan of Charles I for the deliverance of Strafford," English Historical Review 12 (1897), pp.114-116.

[251] Whitelocke, Memorials, I, 130; Baillie, I, 351; Clarendon, I, 337.

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[252] Manning, English People, pp.23-25.

[253] Gardiner, History, IX, 350.

Because of the crowd, the lords put off any debate on the bill of attainder. Instead they were forced to deal with another petition by the citizens calling for Strafford's execution and demanding an investigation into the plot to rescue him from the Tower. The lords spent the rest of the day investigating this matter. They sent some of their members to the King, and some to question Balfour and Billingsly. After the investigation it was ordered, with the King's consent, that none but the customary guards should be allowed into the Tower.[255] On the fourth, crowds again appeared at Westminster, now bolstered by poorer, young apprentices. The lords were prevented from taking up the bill of attainder by the commons, who brought up their protestation, asking them to sign it with them. Most signed, but the lords complained they could not freely deal with the matter of attainder while being besieged with cries for the Earl's execution. They urged the commons, as the people's representatives, to do something. Before the day was out Strafford had lost the support of the bishops, who indicated they would not vote on the bill.[256]

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[254] CJ, II, 132.

[255] Rushworth, Tryal, pp.741-742; Christianson, "The obliterated' portions," pp.346-348.

Tension in the city reached a peak on the fifth. Rumors began to circulate that the plot to free Strafford was part of a larger design to bring the army down from York to use against the parliament. To make matters worse it was reported that the French were moving troops towards the coast. The King was suspected of planning to leave for York, while the queen would go to the fortress at Portsmouth. At this point, Pym decided to relate what he knew about an aborted plot which had involved Suckling and a number of other courtiers loyal to the queen. In late March Suckling, Henry Jermyn, George Goring, Sir George Chudleigh, and William Davenant had, with another group collected around Henry Percy, plotted to urge Charles to bring the army to London. But there was no unity among these men, nor was their plan ever very serious, and it soon fell apart. Rumors were spread and Pym came to hear about it, although he gave it little credence.[257] But on the fifth it suddenly seemed as if a new plot had been hatched, and fears about the safety of parliament were inflamed. In the midst of Sir Walter Earle's report on the plot there was a loud crash, and Sir John Wray claimed he could smell gunpowder. He and some others ran out into the lobby in fear; frightening the people there. Soon the word was spread that there had been an explosion, that parliament was burning, and the papists were rising in arms. Quickly, most of the shops in London were closed and streams of people were rushing to Westminster -some with water to fight the fire. One of the trained bands was armed and marched as far as Covent Garden before discovering that the alarm was false. All this commotion had in fact been caused by two fat members in the gallery who broke the planks they were standing on when they stood up to hear better.[258]

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[256] CJ, II, 132-134; LJ, IV, 233-234; Christianson, "The 'obliterated' portions," pp.348-349.

[257] Manning, "Aristocracy," pp.57-63; Gardiner, History, IX, pp.309-317.

That afternoon the commons directed Whitelocke, Selden, Glyn, and Sergeant Wilde to prepare a bill preventing the adjournment, prorogation, or dissolution of parliament without the consent of both houses. The king was asked not to allow the queen's courtiers to leave London. That night, though, Percy, Jermyn, Suckling, and Davenant fled, and on the sixth parliament ordered the ports closed and issued writs for the arrest of these four and captain Billingsly. A deputy was sent to the king and queen warning them not to leave London on the pretext that only under the eye of parliament would they be safe from the violence of the people. All of Jermyn's papers were then seized from his rooms in the palace. Four hundred troops were sent to reinforce the Tower and the city was put under general guard.[259]

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[258] Rushworth, Tryal, pp.744-745; Baillie, I, 352. Anthony Fletcher has claimed that this incident actually occurred on May 19, but Baillie's account clearly indicates there was a major scare on the fifth, even if it can not be said for certain that the two fat members fell through the boards on this day. Fletcher, Outbreak, p.27. Two other sources claim the same as Baillie. See the Earl of Mountagu's letter in: HMC Mountagu of Beulieu, pp.129-130; and Father Percy's letter in Rushworth, III-I, 258.

While all of this was happening, the lords were finally able to begin debate on the bill of attainder. The tumults outside their house had abated somewhat, but there was still noise and commotion, and most of the lords who supported Strafford simply stayed away out of fear of "having their brains beaten out."[260] The greatest fear, though, was not so much what the crowd might do to the lords, but what might happen to the kingdom if they did not pass the bill. St. John's words that Strafford's crimes would cause people to rise up and kill the king must have caused many to fear the worst. Those that remained began debating the charge in a general fashion, but soon concentrated on articles fifteen and twenty three. St. John's crucial claim that judgement should be based on each man's individual conscience was put to the question and passed before any of the evidence was discussed.[261] For the remainder of the day, and on the sixth, the lords passed nine resolutions which affirmed the truthfulness of all the important evidence against Strafford relating to articles fifteen and twenty three. On May 7, with matters of fact proven, in a pale imitation of the Appellants' action, the lords asked the judges if, in their opinion, the Earl deserved to undergo the pains and forfeitures of high treason. There was little chance the answer would be negative as five of them (Bramston, Davenport, Trevor, Weston, and Crawley) had entered recognizances to abide by the censure of parliament. They agreed unanimously and the question was put to a vote without the lords ever debating the legality of the bill despite the objections of Savile and the Earl of Bath. In essence, the lords accepted St. John's justification of attainder in their first vote on the fifth and never challenged it. Ironically, the vox populi suggested by Glyn had proved to be an effective second witness. The bill was passed by 26 votes to 19.[262]

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[259] CJ, II, 136; CSPVen 1640-1642, pp.148-150; Rushworth, III-I, 240, 250, 252-253.

[260] Clarendon, I, 337; HMC Cowper, ~~II~~, 281.

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[261] Christianson, "The 'obliterated' portions," pp.349-350; Russell, "Theory of Treason, " appendix, p.49. This appendix is a copy of the relevant portions of the Braye MSS in the House of Lords' Record Office. Stacy, "Matter of Fact," pp.341-342.

To be enacted the bill now had to be signed by the king, but he had already indicated that his conscience would not let him do so. His conscience, however, would soon be pushed aside by the heightened pressure of the crowd. On Saturday the eighth rumors were again circulating, this time to the effect that the king had signed a treaty with the French to land ten regiments of troops in Portsmouth. The Londoners closed up their shops, took up arms, and marched on Whitehall to take the royal couple into their custody. The king and queen, hearing the news, prepared to leave immediately, but they were dissuaded by the French ambassador who convinced the people that the rumors were false. For the moment the anger of the crowd died down and the king was allowed to go to parliament surrounded by 2,000 of his subjects. There he was presented with the bill of attainder and the bill for the continuation of parliament.[263]

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[262] Christianson, "The 'obliterated' portions," pp.352-353; Russell, "Theory of Treason," appendix, pp.49-50; Stacy, "Matter of Fact," pp.342-345.

[263] CSPVen 1640-1642, pp.150-151.

That night, Sunday, and through the night again to Monday the City remained in arms. Thousands of people surrounded Whitehall, yelling for justice and threatening the king's life if Strafford's were not taken. The king was a prisoner in his own palace. On Sunday the noise of trumpets and drums raised the sound of the demonstration to a aggressive crescendo while apprentices, cobblers, and fruiterers made a mock demonstration of what they would do once they got into the king's bedchamber. Laud was certain the demonstration was organized and stated that the king was so frightened, he believed that if he did not pass the bill for Strafford's execution the multitudes would come on Monday, pull down his palace, and unthrone him. The queen feared she would be torn to pieces by these "Puritans." To put even greater pressure on the king the opposition leaders sent letters to the country ordering troops to be sent to London from every county.[264]

Faced with this situation the king had little choice, but still he could not bring himself to sign away Strafford's life even though Strafford had sent him a letter claiming he was willing to die to save the kingdom. Charles called his council together and asked what he should do. They advised him to pass the bill, but first told him to consult his bishops -presumably because it was a matter of conscience. Two of the bishops, Juxon and Usher, urged him to remain firm to his convictions, but Williams and the others advised him that the safety of the kingdom was more important than that of one man. In the evening, with tears in his eyes, the king informed the council that he had decided to give his assent; not because his own life was at stake, but for the lives of his wife and children, and for the survival of his kingdom.[265] To avoid further dishonor he delegated authority to carry out the provisions of the bill to three commissioners. On Monday the king's assent to both the bill of attainder and the bill for the continuation of parliaments was announced, and one of the first actions of the commissioners was to prevent the armed men called for by the leaders of the commons from entering the city.[266]

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[264] Ibid., p.151; Rushworth, III-I, pp.257-258; The Works of William Laud, (eds.) W. Scott and J. Bliss, (Oxford, 1847-1860, AMS reprint, 1975), III, 441; HMC Cowper, II, 281; Clarendon, I 337-338; Manning, English People, p.30.

On Wednesday Strafford was executed on Tower Hill in front of 200,000 people. His head was removed with the new axe, adorned in silver, that Cottington had ordered made only a short time before the trouble began.[267] That evening universal rejoicing broke out within distance of the news. Bonfires were lit, and many riding back from London cried "his head is off" as they passed through towns on their way.[268] The execution brought an end to the tension that had been building over the past weeks. Strafford's death acted as a catharsis for the nation. The worst feelings against the government were momentarily avenged, and the danger of any plot to save Strafford vanished with his last breath. The riots against the king ended, although three people were subsequently slain in demonstrations against Mary de Medici, the queen mother. There were subsequent demonstrations against the bishops, but nothing occurred during the summer to compare with the events of early May.[269] The people, however, did not abandon politics. As soon as Strafford was dead a multitude of pamphlets were printed arguing for and against the Earl's execution. With Strafford dead pamphleteers now turned their pens against Laud, accusing him of crimes and calling for punishment.

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[265] Clarendon, I, 338-340; Gardiner, History, IX, 366-367.

[266] CSPVen 1640-1642, p.151; Rushworth, III-I, 262.

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[267] HMC Cowper, II, 267.

[268] Manning, English People, pp.30-31.

[269] CSPVen 1640-1642, p.154; Rushworth, III-I, 266-267, 279.

Ballads against him were sung in alehouses and insulting pictures were posted in the city.[270]

It is easy to overestimate the role of one man in a great historical event, especially one where literally thousands were involved, but it is fair to say that no one worked with such dogged persistence to overcome all the obstacles thrown in the way of Strafford's execution than St. John. Many M.P.s worked on his prosecution, and many citizens organized the demonstrations against him, but the idea of attainder was St. John's, and St. John was the only parliamentarian willing to imply to the lords and king that they could either assent to Strafford's death or risk a destructive revolution against their persons and privileges. Throughout the build-up to the trial, and during the attainder debate, St. John constantly urged the commons to press for their rights at every opportunity. His most important achievement, however, was his argument for the legality of using the bill of attainder against Strafford. Had this argument been unsatisfactory the lords probably would not have passed a bill simply to murder a man. The first thing they voted on was to accept St. John's argument, and it was never questioned after this. Without this argument it is doubtful, too, whether St. John's friends would have gone so far towards risking a popular revolution, even after the plot to rescue Strafford was revealed. The commons believed they were attacking Strafford to save the law from arbitrary government. Given this, it would have been difficult to do away with him by the same means for which he was being tried. If Strafford could not have been proven guilty by law, the only alternatives would have been either to let him live and continue to influence the king, or simply murder him. But too many people feared the implications of either of these actions, and in the end St. John's theory proved to be the solution. To St. John's credit, it is true that his theory was quite justifiable -at least by Fourteenth and Fifteenth-century standards. Strafford was certainly beheaded for greater reasons than many people who went to the block under the Tudor laws of treason, and he was given a much fairer hearing than the Tudors allowed. Also, unlike much of Elizabeth's legislation, the bill created no precedent which could be used outside parliament.[271]

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[270] *HMC* Cowper, II, 282; *Laud's Works*, II, 445-446.

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[271] Bellamy, Tudor Law of Treason, pp.40-46, 61-82 (especially pp.81-82), 142-162.

The validity of St. John's argument has been obscured by the negative opinions of its prominent critics. Selden claimed:

> The parliamentary party, if the law be for them, they call for law; if it be against them, they will go to a parliamentary way...,[272]

and Laud, like Digby, thought attainder was a law made to murder Strafford.[273] These opinions underscore the fact that whatever the validity of St. John's argument, its motivation was political. St. John undoubtedly wanted Strafford dead for the same reason given by Essex; that, "stone dead hath no fellow."[274] Strafford was much more likely to attempt to take action against the parliament than was Charles. In hindsight the bill of attainder, with its emphasis on legality, might seem somewhat conservative, but it was not. The lords and king had to assent to it, and the commons, after making themselves judges, had to convince and force the other parties to agree with them. The decision to go this far frightened away many members. Of all of St. John's precedents, the acts of the Merciless Parliament were clearly the most relevant. This was the only example where opponents of the king, using the authority of parliament, had accused a king's loyal servants with treason, and Richard himself was eventually deposed. Strafford never endangered the king; his treason was against the commonwealth, and the grounds of his conviction were far removed from the Tudor conception of the state, no matter how many times they invoked "popular discontent" to augment their convictions. Once it became clear that Strafford's conviction would have to be carried out over the opposition of many including the king and a great number of peers, a lot of people backed down. Digby's fears that the bill might possibly lead the way to civil war or revolution were shared by others. Strafford's guilt became a yardstick upon which each individuals' willingness to take his reformation closer to revolution could be measured.

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[272] Selden, Table Talk, p.128.

[273] Laud's Works, III, 443.

[274] Clarendon, I, 320.

St. John demonstrated that he was willing to go very far. Indeed he threatened revolution in his speech, and most likely helped to organize the demonstrations against the lords and the king. With the revelation of the army plot, the crowds probably became more threatening that St. John or anyone else suspected, but this did not stop him from continuing to call for demonstrations. With every day, the threat that the crowd might take some action grew. The

Venetian Ambassador feared "something of the most monstrous description," and reported that:

> The wisest freely predict that this monarchy will soon be turned into a completely democratic government...[275]

Had the bill of attainder not passed the lords by the narrow margin of seven votes; had the king procrastinated further, or refused to sign the bill; or had he attempted to leave the city on Saturday morning, Parliament might have found itself -to the horror of many gentlemen- on top of a revolutionary situation. St. John was willing to risk this, which indicates an intention to go to whatever lengths were necessary to reform the government. All that he did demonstrates that he believed what he said in defence of Hampden: that the ultimate power of the state should reside in parliament, which had the power to initiate a purgation of the executive if such action was necessary. With the divisions and disagreements within the commons, and between the commons and the lords, St. John could never have hoped to have instituted an organized plan of legislative reform. What he desired was already too radical. It was enough of a struggle simply to achieve what he did. Initiatives taken in the Long Parliament came only in a haphazard fashion, but there is enough evidence to state with certainty that, at this time, St. John was a man whose actions matched his ideas.

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[275] CSPVen 1640-1642, pp.148, 152.

IV. OTHER BUSINESS: THE ATTACK ON SHIP MONEY AND THE ROOT AND BRANCH BILL

Although it was true, as one letter writer reported, that by March at least the prosecution of Strafford had become the greatest and most time consuming issue before both houses, in the earlier months of parliament, ship money, religion, and other matters figured prominently.[1] During November and early December, although St. John was already expending a considerable amount of energy preparing the case against Strafford, his most pressing concern was with ship money.

In contrast to the Short Parliament, the legality of ship money was no longer an issue of great contention. The King had given parliament the right to deal with grievances as it saw fit and was no longer forcibly maintaining his right to levy the tax, even if he had done nothing to deny it. Those who did not want to pay simply did not do so. If there were members of the gentry willing to pay, it was usually the case that the constables would refuse to collect, citing what they considered to be the illegality of the tax. By September, most sheriffs had given up trying to collect, or even hold on to goods they had distrained which were being forcibly reclaimed by villagers during the night.[2] The state papers clearly indicate that once it had been decided that the Long Parliament should meet, Charles gave up on his hopeless attempt to squeeze ship money from his reluctant subjects.[3] When parliament met in November it did not have to concern itself with halting the collection of ship money; this had already been done voluntarily by the collectors. In a practical sense ship money was dead, but at some point the illegality of it would have to be asserted to justify the country's resistance, and to prevent it from being levied in the future.

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[1] HMC, De L'Isle and Dudley, VI, 396.

The commons took up the subject in late November 1640. On the 24th, George Peard, the man who had been censored for calling ship money an abomination in the Short Parliament moved that a day be set aside for debate on the matter. The house decided to raise the issue on friday the 27th.[4] On this day it was immediately moved by Sir Walter Earle, upon the feeling of the house, that St, John should inform them of the best way to proceed. St. John emphasized the constitutional danger of letting ship money stand. He said it was no longer the money that was the grievance, but the opinions of the judges and the reasons of the judgements. The judgements meant that money formerly levied for the public good -to build bridges, roads, castles, etc., and to repair the same- could now be levied indefinitely against the wishes of the people. Hence parliament was needed to control this form of revenue.[5] He cited the judgement of both houses of parliament expressed in the Petition of Right against the enforcement of the forced loan, and the further declaration therein that no man should be forced to yield any gift, loan, benevolence, or tax without common consent of parliament.[6] St. John compared the rationale given for enforcing the forced loan with that of the post- 1634 ship money levies, and pointed out that in both cases it was roughly the same; that the King had judged the kingdom to be in imminent danger and needed money for its protection. In

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[2] CSPD, 1640-1641, pp.24, 24, 40-41, 58-59, 70-71, 83.

[3] This is also demonstrated in the register of privy council business. Before October of 1640 the largest amount of business dealt with by the council had to do with ship money. By the end of September this amount of business had become a mere trickle. Privy Council Registers, (reproduced in facsimile, London, 1968), XI, 855-860, XII, 305.

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[4] D'ewes (N), pp.63-64; Proceedings, p.112.

[5] D'ewes (N), p.74.

[6] Gardiner, History, VI, 148-149, 154-156, 212-217; Jones, Politics and the Bench, pp.70-71.

St. John's view the Petition of Right had proven that the commission for the forced loan was illegal and hence not justifiable under the rationale given by the king. In the same way, ship money was unjustifiable because it attempted to tax people without their consent in parliament. It clearly violated the Petition of Right. By violating the Petition of Right, St. John claimed that the judges had overthrown a judgement of parliament, whereas before they had always come to parliament to know what the law was. If the judgements for ship money were allowed to stand the commons would have no power of judicature; they would be left with nothing to do but grant subsidies.[7]

The points St. John made repeated much of what he said in his defence of Hampden, although the emphasis on the Petition of Right was new. Now that he was arguing before the commons he did not have to defeat the crown's case once again; it had been printed and was in many hands. He was arguing for the abolition of ship money, and emphasized the dangerous precedent it set against the right of the commons to have a role in the making of law. At the trial he had implied that the lords and commons had the power to declare law by themselves if necessary, and here he urged them to do so for their own protection. In response to this speech the house appointed a committee, including St. John, to consider the whole matter.[8]

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[7] D'ewes, (N), p.74.

This committee reported back to the house on December 7, and again St. John was given the task of speaking to the commons. He repeated what he had said on the 27th and had someone read the King's letters to the judges; their answers, a copy of a ship money writ, and the judgement delivered in the Hampden case.[9] When this was finished, he related that the committee believed all the proceedings concerning ship money were completely illegal, and proposed the house should vote on them right away. Herbert stood up and tried to stall, but was countered by Peard who stated his hope that this would be the funeral day of ship money. As far as the commons were concerned it was. The speaker proposed four questions on the suggestion of St. John and all were voted nullo contradicente with no opposition. The first question claimed, "that the charge commonly called ship money; [is] against the laws of the realm, the subject's right of property, and contrary to former resolutions in parliament, and the Petition of Right." The second that the extrajudical judgements solicited by the king were against the laws. The third declared the illegality of the ship money writs, and the fourth voided the proceedings against Hampden in the Court of Exchequer.[10] It was further ordered that the writs and all the judgements for ship money should be entered in the Commons' Journal together with the votes against them.[11] It was then ordered that the committee should prepare to present the commons' votes to the lords, "that they might likewise vote it." Sergeant Wilde moved to have the ship money judgement taken out of the records right away, but St. John informed him that they would have to wait for a resolution from the lords.[12]

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[8] Ibid., pp.74, 543; CJ, II, 38. St. John also urged that the continued collection of tonnage and poundage without the authority of parliament violated the subject's right of property. He was backed up by Selden and D'ewes who both moved that the question of tonnage and poundage be considered by the committee. It was moved by many to draw up a new bill of tonnage and poundage and, as Pym put it, "to think of a recompense to his majesty." But St. John had only wanted the potential illegality of the collection, without authorization by act of parliament, discussed, not a new act voted, so he moved that no grant of tonnage and poundage be made so early in the parliament. As a result the motion died. D'ewes (N), 74-76, 543.

[9] Ibid., pp. 113-115.

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[10] D'ewes (N), pp.115-116; CJ, II, 46.

[11] Ibid., p.114. The printed journals, however, record only the votes; the other lengthy material is not printed.

[12] Ibid., p.117.

Even if the commons were not willing to destroy the records on their own initiative, they were still claiming more power over the raising of supplies by voting down the King's most important policy initiative of the last decade. The novel procedure of recording the illegality of the writs and judgements in the Commons Journals indicates that as far as the lower house was concerned, ship money was acknowledged to be illegal from this day forward. They were simply waiting for the lords to confirm their decision. In 1628 the Petition of Right had been resorted to when it was believed that the King had broken the law. Since the King could not be tried in any of his courts, a petition of right was the most forceful means the commons could use to express their concern. If a King was to do no wrong he was expected not to break his own laws. Now this caution was dispensed with. Although the King was not mentioned, the commons declared that the law had been broken and that they were going to enforce what was legal.

The commons could not punish the King without a revolution (and many still believed him to be innocent), but they could punish the judges who had supported ship money. As soon as the votes had been taken against the tax, Lucias Cary, Viscount Falkland, made a speech condemning the judges for their support of ship money. Falkland was a ship money defaulter who had been admitted to Lincoln's Inn in January of 1639 at the request of William Lenthall, the speaker of the house.[13] He had said almost nothing in the house to this point, but was elected by the propriety committee (he was not a member) to make this speech because of his moderate opinions. Ship money was not a contentious issue, but it was evidently felt by St. John and the committee that charges of treason against any of the judges would be. The charges against Strafford had been carefully planned, and here the aim was to tie a charge of high treason against Finch with the votes against ship money. As Falkland put it, "we must now be forced to think of abolishing our grievances... [by] taking away this judgement and these judges together."[14] Falkland began by apologizing beforehand to St. John in case he seemed to be entrenching upon his work. He claimed he had little knowledge of the law but was moved to speak out of public interest. His speech went over a number of points St. John had already made having to do with the effect of the judgements: the judges, who should have been "as dogs to defend the sheep" had taken on the role of wolves and infinitely abused the king. But all this was simply preparation to accuse Finch of high treason.[15] It was well known that Finch had solicited the other judges opinions for ship money and he had made himself terribly unpopular by being its most vocal supporter, especially at Court. As Lord Keeper he was also a privy counsellor, and had the king's ear. He was accused of attempting to subvert the law and introduce arbitrary government.[16] He had supposedly declared that the ability to levy ship money was a right so inherent in the crown that it could not be taken away by parliament.[17] Finch was singled out, initially, from the other judges because he had had the opportunity to falsely counsel the king on matters of law and the power of the prerogative, and because it was he convinced the other judges that they needed to support ship money:

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[13] Keeler, Long Parliament. p.127.

[14] Diary of John Rous, p.107.,

> ...there is one I must not loose in the crowd, whom I doubt not but we shall find, when we examine the rest of them, with what hopes they have been tempted, by what fears they have been assailed, and by whose importunity they have been pursued, before they consented to what they did: I doubt not, I say, but we shall then find [Finch] to have been a most admirable solicitor, but a most abominable judge.[18]

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[15] Rushworth, III-I, 86-87. Rushworth prints a different account of Falkland's speech than Rous. Both have been used here.

[16] Rushworth, III-I, 87.

[17] Idem., This was apparently said on one of the western circuits. D ewes (N), pp.124-125.

[18] Diary of John Rous, p.107.

There was much debate after Falkland's speech, but notably no objection to proceeding against the judges or accusing Finch of high treason. Their collective unpopularity by this time (excluding Croke) made the committee's caution unnecessary.[19]

Another committee was set up to go to the judges chambers and question them about Finch's actions. It reported back the next day, and it was clear that Finch had solicited the other judges opinions, although only Croke stated that he had been bullied into making his judgement. Evidence was given of Hutton's problems with ship money, and St. John made a curious point about Denham, who had died in January 1639. He claimed that the letter Denham had written to the other judges declaring his support for Hampden, during his sickness, had been ignored by Finch, who told the king that Denham had delivered his opinion for the crown. According to St. John this led to an argument between the two after which they stopped talking to one another.[20] The house gave the ship money (propriety) committee the task of preparing charges against Finch and the other judges, but before the day was out the committee was given a whole list of things to investigate: the commission for the forced loan; the commission of excise; the proposed addition by the lords to the Petition of Right; the denials of Habeas Corpus; the extrajudicial proceedings in 1635 and 1637; the Court of Admiralty; and the use of the judgement in Hampden's case to bind the whole kingdom and keep other ship money cases out of the higher courts.[21] All of this represented the concern of St John, and undoubtedly many others on the committee and in the house, to emphasize that what parliament had done in the late 1620s was not enough.

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[19] D'ewes (N), pp.117-118; Jones, Politics and the Bench, pp.141-142.

[20] D'ewes (N), pp.121-125.

Despite its heavy workload the committee worked quickly, and eleven days later (Dec. 19) St. John made a long speech to the house where he reported the charges that had been drawn up against the Lord Keeper.[22] He urged the house to vote on the articles right away, but John Finch, a kinsman of the Lord Keeper, moved that he might be heard first.[23] There followed a "long and tedious dispute" and it was resolved to give Finch a hearing on Monday (the 19th was a Saturday). This unfortunately gave him time to prepare his escape if need be (Laud had been impeached and taken into custody only the day before). Finch made his speech on Monday and claimed that he had simply followed the orders of the king, which "rather aggravated than mitigated his crimes," despite his eloquence. A vote was taken and he was accused of high treason with less than ten objections. It was resolved to ask the lords to do the same, but as it was past noon the upper house had already risen. The next day the commons prepared to send their message but were informed that Finch had fled to Holland during the night.[24] The lords ordered him apprehended if found, but the commons did not carry up their charges. Instead, Berkley, Bramston, Davenport, Crawley, Trevor, and Weston were bound by the lords at security of 10,000 pounds each to present themselves before parliament for judgement.[25]

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[21] CJ, II, 47. These responsibilities were added to an already large workload. The committee was responsible not only for looking into the many petitions complaining about the collection of ship money, but also the collection of tonnage and poundage, the proceedings in parliament leading up to the Petition of Right, and Mainwaring's case. CJ, II, 38; D'ewes (N), pp.141, 170, 176-177.

[22] Ibid., p.172; CJ, II, 55.

[23] John Finch presented a letter to the house from the
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Lord Keeper on the 18th requesting that he be allowed to speak in his defence, but the house did not allow the letter to be read. Pym and others urged that the Lord Keeper be given an opportunity to present his case, although the matter was dropped without resolution. D'ewes (N), pp.168-169.

[24] Ibid., pp.174-176, 178; Rushworth, III-I, 124-129.

[25] Ibid., p.130; D'ewes (N), p.178. William Jones had died on December 9, two days after being questioned. Foss, Judges, VI, 340.

With Finch gone, questions about the judges receded into the background over Christmas: so did ship money. It has been proposed recently that parliament dragged its heels before finally declaring ship money illegal because of indecisiveness, but this was not really so.[26] The commons were prepared to deliver a report of their vote against the tax together with the charges against Finch, but when he fled they were left with the much more difficult problem of deciding how far to proceed against the rest of the judges. Because the alleged crimes of the other judges were so intertwined with ship money, this was not raised with the lords until the commons were willing to say something further about the judges. There was no rush to have ship money declared illegal as long as parliament was still sitting because it was not being collected.

The question of ship money was not raised again until January 14 when St. John was appointed to relate what the commons had decided about it, Finch, and the rest of the judges. The theory of treason presented in this speech has already been discussed, and so has St. John's attack on ship money. Hence little remains to be said. The speech was dramatic and filled with harsh language. Ship money, St.

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[26] Sheila Lambert, "The Opening of the Long Parliament," Historical Journal 27 (1984), pp.273-274.

John claimed, delivered the subject's person and life upon grounds of false law to the bare will and pleasure of the King, and reduced the whole Kingdom to a lower state than villeinage. A villein might be taxed and imprisoned at will but his life was still his own. The council's arbitrary method of compelling people to pay removed even this last shred of dignity.[27] He claimed that the judges had levelled all the old laws that were the the sea walls which kept the commons from being inundated by the prerogative. They had broken their oaths to give justice according to the laws. By using the law to defend arbitrary power rather than defend against it, they had "blown up" the whole system of English government.[28] He indicated that all the judges could be charged with treason, given the precedents of Richard II's reign, but charges against all of them were not yet prepared so St. John merely directed the lord's attention to the charges against Finch. These were read, and Falkland made another speech against the former Lord Keeper.[29]

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[27] Mr. St. John's Speech... Concerning Ship Money, pp.4, 8-9, 10.

[28] *Ibid.*, pp.24, 25, 42.

[29] D'ewes (N), p.255; Rushworth, III-I, 139-141.

On January 20 the lords voted on the four ship money questions and they were all passed nemine ~~contradicente~~ contracente.[30] At some point after this, a committee was set up to investigate how the lords could legally vacate the records of the ship money judgement in the Exchequer. It reported back on February 26 and it was ordered by the lords that either the Lord Keeper or the Master of the Rolls, together with the two Chief Justices, the Lord Chief Baron, and the Chief Clerk of the Star Chamber should bring all the judgements and proceedings, including the writs and warrants, concerning ship money into the upper house the next day so that a vacat could be made of all the records, and the judgement of both houses of parliament annexed to the documents.[31] The next morning the appointed officers duly entered the house carrying the documents demanded. They made three obediences before coming to the bar, three more at it, and then in an act of ceremonial propriety laid them on the Lord Keeper's woolsack (now Edward Littleton, but he was sick and not present). The fitting irony of this must have struck more than a few observers considering the sack's former occupant. They were taken to the clerk's table, the wording of the vacat was read, and the clerk was ordered to draw a cross through all the rolls. Thus, while the house patiently watched, the most ambitious, and most widely and actively opposed policy of either of the first two Stuart monarchs -a policy which had burdened the whole country with the weight of its enforced administration, and the consequences of its dubious legality -which had kept Hutton, Charles' honest judge, awake at night worrying about the future- was inked out of the records.[32]

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[30] LJ, IV, 136.

[31] The judgement of parliament was also ordered to be published at the assizes, and any record of the illegal judgement by a Clerk of an Assize was to be similarly vacated. LJ, IV, 173.

The importance of this vote needs to be stressed. It is too often claimed that ship money was not abolished until the statute declaring it illegal was passed on July 27, but the lord's action on February 27 makes it clear that the statute simply reinforced what had already been done. Parliament's judgement carried out on February 27 is very important because it was done without the formal consent of the king. The fact that the judgement has garnered so little attention indicates how absolute the opposition to ship money was by this time. It is true that the lords were, in a sense, only executing their jurisdiction as the highest court of appeal for writs of error, but in this case the error had been voted by the commons, totally damning judgements that were three to seven years old, and the king's writs as well. All of which was quite extraordinary and novel. As St. John had pointed out, the most disliked feature about ship money had been the king's attempt to legislate without parliament. Now parliament had turned the tables on the king and destroyed this policy without his participation. The vacating of the records of ship money employed a power which the two houses of parliament had never used before, but which St. John had on previous occasions suggested they rightfully possessed.[33] In a sense

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[32] LJ, IV, 173; D'ewes (N), p.123; Foss, Judges, VI, 347.

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[33] A comparison of the procedure used here with that used in 1628 to vacate the warrant for the commission of the excise shows the distance that had been traveled in terms of the power the two houses of parliament were willing to claim. The commission of the excise was a body of 33 servants of the crown appointed in February 1628 -after the summons of the new parliament had been sent out- to investigate ways of raising money by the imposition of new excises. The commons took up debate on this issue soon after the Petition of Right had been assented to by the king, and it was promptly voted by the house to be in violation of the Petition, and hence illegal. Coke made a report of this vote to the upper house and asked them how a vacat could be made of the warrants for the commission. The lords immediately penned a message to the king requesting him to cancel the commission and vacate its enrollment. Two days later the Lord Keeper reported that his majesty, now that five subsidies had been granted, agreed to the cancellation and the vacat. The commission was subsequently vacated by a clerk in the presence of the king and Lord Keeper, and this was reported to parliament. For a text of the order for the commission see, CD 1628, IV, 241-242. For criticism of the commission see, CD 1628, IV, 146, 147, 158, 159, 164, 167, 173, 181, 182, 184, 185, 187, 188, 189, 190-191, 192, 200, 294, 296, 297, 300, 302; the commission declared illegal in the commons, IV, 290, 294, 297, 300, 302; read in the house of lords, V, (Lords Proceedings

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this move was constitutionally the most "revolutionary" action before 1642 because it ignored the king's position as the head of the commonwealth. Since most in the commons, unlike St. John, had no set desire to see this power extended universally, the statute was drawn up in the summer to give the vote against ship money the power of regular legislation. It also issued a general order declaring all "records,- remembrances, judgements, enrollments, and proceedings" having anything to do with ship money to be void ,and to vacate the same.[34]

One last point which should be made about St. John's attack on ship money and the judges is his treatment of the Petition of Right. At Hampden's trial St. John had mentioned that the Petition was a precedent which could be used to demonstrate ship money to be illegal, but he did not emphasize it because he had to refute the older precedents which Noye had exhumed to get around the Petition.[35] St. John now emphasized the Petition to prepare the attack on the judges. He interpreted it as a having the force of

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1628), 646, 648, 649. For reports of the kings answer, cancelation of the commission, and the entry thereof in the commons' journal see, CD 1628, IV, 373, 375, 377, 379, 380, 383; V, 661, 663, 665, 672, 673, 674.

[34] SR, V, 116-117.

[35] Gardiner, Constitutional Docs., pp.66-67.

legislation, although this does not mean that he saw it as a law, or a set of laws in itself. In 1628 the majority of the commons had no desire to declare a new law because they felt the government had violated valid law. The important part of the Petition of Right was the explanation which declared the law to have been broken and asked that taxes not be collected in the future without parliament. The commons did not wish to go any further than this because it would have brought them face to face with the difficult question of how an "absolute" king could be controlled if he refused to play by the rules. The Petition stated that in matters of taxation and imprisonment the government had to obey the laws, but it made no provision for taking any action if it did not in the future. Still, Coke at least, wanted to make sure that this explanation and warning had the same force as legislation. On June 7 when the king came before both houses and gave his answer to the Petition: Soit droit fait comme il est desire, Coke claimed the answer was even better than that given to a public bill and called it the greatest judgement that ever was.[36]

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[36] Professor Guy has argued that the Petition of Right was, "an option of primarily cosmetic value," which the commons turned to only after the king's speech reported on the 5th of May, where he warned the commons that he would not be held responsible if they attempted to "tie the king by new and indeed impossible bounds" Guy, "Petition," p.308; CD 1628, III, 254. But Dr. Guy overestimates the
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The petition was important to St. John because he

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commons resolution to proceed by way of a bill before May 5. In the debates from April 28 to May 5 most members talked about a bill, but what they said was very general and only concerned what they wanted to say about the commission of the loan, martial law, and imprisonment without cause. There was no discussion about the force of statute, or the difference between statute and and a petition. CD 1628, III, 128, 129, 134, 149, 150, 165, etc. The difficulty the commons faced was how to put an explanation into a law. The king feared that the commons would go too far, and indeed make a law that would attempt to set limits on his prerogative. He need not have, however because the commons had no desire to alter the balance of power in the state to this degree. They did, though, want to make a clear statement of their feelings. When Coke suggested a petition of right it was immediately supported by many in the house as the sort of procedure which the commons could use. It would be a method of getting the king to agree with them without seeming to force him to do so. CD 1628, III, 271-272, 277, 282-283, 286, 293. Going by way of a petition also had an enormous tactical advantage because the king could be asked to give it his assent before the last day of parliament. Nathanial Rich pointed out that if the commons and lords passed a bill the king might simply take his subsidies and then dissolve parliament without passing it. CD 1628, III, 294.

Opposition to the Petition in favor of a bill does not seem to have been as strong as Dr. Guy suggests it was. At one point he claims that a large part of the commons had doubts about the validity a petition of right would have. Guy, "Petition," p.311n.113. In reality, on the date he points to, only one man, Sir Thomas Wentworth, made this claim, in part because he agreed with some of the lords resolutions of April 25 to tone down the statements the commons had voted to put in the petition. CD 1628, III, 98, 102-103, 108, 111. Wentworth did worry that the petition might remain "wrapped up in a parliament roll" where no one would see it but later he claimed that the petition would become law if both the lords and commons agreed to it, and the king gave it his assent -which is precisely what happened in the end. The other two men whom Guy cites as objecting to the idea of a petition of right were both countered by others who felt that it was a valid procedure. CD 1628, III, 278, 284, 290, 293-294. The commons believed
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wanted to prove that the judges had broken a judgement of parliament. He now wanted to do what the framers of the Petition had avoided: to punish those who had broken the law. He used the Petition because he wanted to show that not only had the old laws about property been broken once again with ship money, but also that the opinion of parliament had been flagrantly violated. By declaring legal that which had been declared illegal by the Petition the judges had set themselves above parliament, which would make the institution worthless.[37] In this way the judges could be accused of treason for consciously attempting to overthrow the judgement of parliament and set up an arbitrary government.

After this speech, St John did not take a prominent role in any further prosecution against the judges. He remained on the committee which drew up the charges against Berkley but did not push to have him brought to trial. The animus against the other judges was never as great as it had been against Finch. Palmer, Glyn, and Maynard who would do most of the work managing the Strafford's trial all opposed

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what they were doing had a great deal of force but we will have to wait for Professor Guy's next article to see how the Petition of Right was interpreted in 1628 and 1629.

[37] *Mr. St. John's Speech... Concerning Ship Money*, pp.22-23; D'ewes (N), p.74; Rushworth, III-I, 137-138.

charging Berkley with high treason.[38] The difficulties faced in proving Strafford guilty put a tremendous obstacle in the path of proceeding further against the other judges. Also the judges were needed if the courts were to continue to sit. As a result the commons drifted and St. John never had enough support ,nor in the end, the inclination to press forward with his ideas about the Petition of Right.[39] St. John's work is however evident in the statute against ship money where the connection with the Petition of Right was made obvious.

Early in the summer of 1641, St. John turned his attention to the question of church government. His concern with religion always had some secular connection. Unlike some other members his attention was devoted to constitutional matters first and then religious matters. He was not concerned to discover a popish plot motivating the actions of the government.[40] Clarendon claimed that he "contracted an implacable displeasure against the church purely from the company he kept, but this overstates the matter.[41] St. John had enough reasons of his own for disliking episcopacy.

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[38] D'ewes (N), pp.352-354.

[39] For a discussion of this, and the eventual charges drawn up against the judges see, Jones, Politics and the Bench, pp.141-144.

[40] For a discussion of Pym's religious motivation see, Russell, "Pym," pp.159-165.

Some evidence, in the form of a commonplace book from the 1620s and early 1630s, has survived which gives an indication of St. John's religious feeling in early life. St. John was certainly a Calvinist, and concerned with predestinarian theology, but given the present state of historical knowledge it is difficult to know whether to call him a "Puritan."[42] He looked forward to a godly reformation, was concerned with moral virtues, and married in to a "godly" family, but he had a very secular interpretation of society and government. The force of his belief remained very personal. He kept whatever motivation he derived from religion to himself, and chose to express himself in secular terms.

Like many lawyers, St. John preferred an Erastian church. In his early years he exalted lay authority over ecclesiastical, and first voiced his concern about church government in the Short Parliament where, with Pym, he questioned the power of Convocation. Convocation was a body of the clergy that always sat during the same days that a parliament was in session. It had the power to debate and legislate on religious matters. This power had been called into question before by parliaments, and in the Short Parliament people began to worry when some members of Convocation boasted that they had now been given more power by the King's commission than they had had for forty years. It was soon discovered that the purpose of this extended power was to frame new canons for the church.[43] Both Pym and St. John questioned whether canons made in Convocation could bind the laity. St. John argued that canons could only bind the clergy because a comparison of the wording of the writs issued to summon Convocation and to summon parliament demonstrated that anything concerning the laity had to be passed in parliament before it could become valid. He expressed his own reason for opposing the placement of a unilateral power to decide and enforce religious matters within the church to be the danger of excommunication. This would theoretically mean that the church hierarchy could, if it wished, arbitrarily enforce any new rulings passed by the Convocation with the threat of excommunication.

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[41] Clarendon, I, 246.

[42] Pearl, "Oliver St. John," pp.500-501; Tyacke, "Puritanism, Arminianism and Counter-Revolution," pp.135-136.

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[43] Proceedings, pp.164, 175; Gardiner, History, I, 291, VII, 21, 46; Maitland, Constitutional History, p.508.

Excommunication virtually removed all of a person's legal rights.[44]

St. John's argument shows that he had probably read Erastus. J.N. Figgis pointed out at the turn of the century that Erastus' own position had not been to uphold the power of the state to enforce ecclesiastical discipline -which was what "Erastianism" came to signify- but rather to oppose the Genevian system of placing the power of excommunication solely with the clergy. He said little about the secular power of the magistrate. His concern was to deny the clergy power of jurie divino, for he considered toleration a more justifiable method of ethical reformation than force.[45] This idea formed the core of St. John's Erastianism. Just as he opposed ship money for being an arbitrary tax enforced without the consent of the people in parliament, he opposed the power of the clergy to make changes in the country's religion without the presumed consent of those whom it would affect.

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[44] Ibid., pp.508-509, 524; Proceedings, p.68.

[45] William Lamont, Godly Rule, (London, 1969), pp.113-115; J.N. Figgis, "Erastus and Erastianism," Journal of Theological Studies 2 (1900), pp. 66-101.

The potential for a dangerous increase in the power of church government inherent in the writs for Convocation seemed to be born out when it unexpectedly continued to sit after the Short Parliament was dissolved. This had never been done before, and was opposed by Laud, but Charles wanted the clergy to grant him subsides and finish the new canons, so he ignored the Archbishop of Canterbury and turned instead to Finch who assured him that the continuation of Convocation was not illegal.[46] On May 16 Convocation granted six subsides of 20,000 pounds each, to be paid yearly by the clergy, only they called it a benevolence because constitutionally they could not grant subsidies without the agreement of parliament. Next they published seventeen new canons as a manifesto to counter the Scottish covenant. The wording of the canons was not harsh, but they were designed to compel people to adhere to the ceremonies of the Laudian church and confess loyalty to the king and his government.[47] The preamble blamed a number of "crafty seducers" for attempting to convince well minded people that the king was altering the established religion, and warned that anyone who would entertain such "brain-sick jealousies" would be prosecuted in High Commission. the canons themselves began with an order to the clergy to uphold the divine right of kings founded upon the laws of nature, to rule their dominions, and punish all wicked doers with the temporal sword. These words were not new, James had talked about divine right and the Tudors had made use of the theory, but to speak of enforcement with no mention of the law or the king's obligation to his subjects, was highly unusual. To make matters worse, the whole point of this canon had little to do with religion. It was intended to force people to pay ship money and coat and conduct money, claiming that any tribute, custom, aid, subsidy, or any manner of necessary supply was due to the king from the laws of God and nature. The subjects' right to property was upheld, but not to the extent that he could disobey the king. Members of the clergy, and numerous secular professions -including lawyers- were required to uphold this canon in public. Those who publicly opposed this article were to be excommunicated.

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[46] Gardiner, History, IX, 142-143.

[47] Ibid., IX, 144-147.

There were other unpopullar things in the canons such as the oath to uphold the doctrine and discipline of the Church of England, which again had to be sworn by secular officers, but the attempt to use the church to justify and enforce taxation by divine right trully shocked many. It must have seemed as though the clergy were trying to give the king an even greater power to collect taxes than the judges had allowed him. This, combined with the fact that there were two archbishops and one bishop in the privy council (Laud, Williams, Juxon) made it appear as though church government was intended to become an arm for the enforcement of the arbitrary proceedings which were becoming more common in 1640.[48]

Not surprisingly, both the canons and Convocation came under attack in the Long Parliament. Sir Thomas Withrington claimed that the first canon "meddled with all our liberties, courts, and laws, and taught a new doctrine concerning the prerogative." Another hoped that their burial would be more honorable than their birth, and it was proposed that they should be burnt. Most considered the canons illegal but the question of whether Convocation could bind the laity with their canons was a slightly more controversial point. When this was first debated, at least one person (Dr. Thomas Eden) made a lengthy argument to show that by the statute of 25 Hen.VIII c.19 canons could bind the laity. His evidence was countered by numerous members, and when discussion was taken up again five days later, opinion was so overwhelmingly against the canons that it seemed certain that they would be voted down. But Robert

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[48] Laud, Works, V, 609-633.

Holborne, St. John's old companion, objected to a vote, stating that he wished to have an opportunity to defend the rights of Convocation. The next day using many old statutes he defended its right to make binding canons independently of parliament. St. John obviously disagreed with his former associate, and rose to present an arguement against him. He held that without an accompanying act of parliament canons could not bind the laity, nor could they even bind the clergy. No one had yet claimed that the final decision on what ministers should preach should be taken out of the hands of the church hierarchy and given to parliament. Here was a foreshadowing of his Root and Branch bill. Realistically, he argued that any change in religion would affect the whole realm. As long as there was a national church all would inevitably be bound by the decisions of Convocation. Because religion affected all, church doctrine and legislation should be approved by parliament, which was the only representative institution. Since the clergy that sat in Convocation were not elected they could not make binding legislation. As evidence St. John drew on many statutes, including 25 Hen.VIII and others having to do with the reformation to show that religious matters had been previously determined in parliament.[49] Again St. John complained of the "horrible tyranny of excommunication," which demonstrates the ethical basis of his opposition to the church hierarchy. After St. John's argument, it was voted without contradiction that no Convocation could bind the clergy or laity without the consent of parliament, and that all the canons agreed to in 1640 were not binding.[50]

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[49] D'ewes (N), pp.152-156; Elton, England Under the Tudors, pp.131-134; SR, III,

Apart from this argument, there were few instances where St. John expressed his religious views before the summer of 1641. When the Root and Branch petition against episcopacy, presented to the commons on December 11, was finally brought forward for discussion on February 8, St. John was not one of those who made a speech but he did urge "most Honestly" to have it committed for consideration. The house voted by the narrow margin of 35 votes to consider it and the Committee for the State of the Kingdom, on which St. John sat, was given the responsibility of looking at it.[51] Just before Strafford's trial St. John supported the suggestion of Edward Bagshaw, a Middle Temple lawyer who had already been in trouble with Laud over some lectures delivered in 1640, that bishops should not be allowed to have a vote in parliament. He argued, they were not there representatively, they had no right to sit there by blood, and could not sit simply as a profession.[52]

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[50] D'ewes (N), p.157

[51] Ibid., pp.337, 343; CJ, II, 81.

The house voted strongly in favor of drawing up a bill to remove the bishops right to vote and went on to add that the bishops should be prevented from presiding in any civil court, and from sitting as privy counsellors. A bill was drawn up and passed the lower house on May 1. But the lords were not pleased to see the commons putting forward innovative legislation which directly concerned the constitution of their house. Tension between the two houses was already at a height, and on June 8 the lords defeated the bill, although they stated they would agree to a lesser bill which simply debarred bishops from any secular office.[53]

Had debate ended at this point it might be possible to see St. John as one of those M.P.s who supported the abolition of bishops holding secular office and sitting in parliament, but not of episcopacy. The abolition of episcopacy had been demanded by numerous popular petitions, and many M.P.s were very hesitant to support it because they feared social instability. But, when it became obvious in late May that the lords were going to defeat the commons' bill, St John angrily drew up a short bill to effect what the Root and Branch and other petitions had demanded: the eradication of archbishops, archdeacons, deans, chapters, and all other ecclesiastic officers. At this point he was working with a very small group of determined rooters which included Nathaniel Fiennes, the younger Vane, Arthur Haselrig, and Oliver Cromwell. So as not to give himself away, and to make it seem as though the abolition of episcopacy had a body of support among members who had violently criticized the church, St. John decided to introduce the bill obliquely through the person of Sir Edward Dering.

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[52] D'ewes (N), pp.467-470, 471-473; Keeler, Long Parliament, p.84.

[53] Clarendon, I, 309-313; CJ, II, 101-102, 110, 131; LJ, IV, 269; Rushworth, III-I, 280.

The religious position of Dering has been widely discussed because so much of his correspondence has survived. Dering had previously made a number of speeches urging parliament to deal with the miseries of the church. He introduced the Kentish petition which castigated episcopacy, claiming that his heart went "cheerfully along therewith," but was typical of those who zealously attacked the Laudian church but were undecided about how it should be reformed. The Kentish petition probably went further than he wished, and his support was largely motivated by considerations of patronage, but he was impulsive and volatile; an ideal choice to be the vessel through which St. John's bill could be introduced.[54]

On May 27 Haselrig made it a point to sit behind Dering, who was his friend. They happened to be in the gallery so Vane and Cromwell brought the bill up and handed it to Haselrig. Dering was eager to make his mark in the house so St. John had slyly included two lines from Ovid's Metamorphosis in the bill's preamble which would flatter Dering. These were:

> Cuncta prius tentandas sed immedicabile vulnus
> Ense recidendum est, ne pars sincera trahatur,[55]

which were typical of St. John's sentiments. They had the desired effect and Dering rose from his unusual place in the gallery, read the preamble, and asked to be allowed to read the bill. Hyde objected because it had not been requested by the house, but St. John pressed to have it read. This was done and debate lasted all day before the house accepted the bill for consideration.[56]

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[54] Fletcher, Outbreak, p.96; Lamont, Godly Rule, pp.83-93; Derek Hirst, "The Defection of Sir Edward Dering, 1640-1641," Historical Journal 15 (1972), pp.193-208.

[55] Clarendon, I, 314. Translated, these lines read: I swear that I have already tried all other means. But that which is incurable must be cut away with the knife, lest the untainted part also draw infection. Ovid, Metamorphosis, (ed.) Frank Justice Miller, (Cambridge Mass., 1960), I, 14-15.

It was debated at length throughout June and July in committees of the whole. Attendance ,however, was sparse as many M.P.s left London for the summer to see their families and to check on their estates. This gave the rooters the opportunity to press forth with their bill, but there was never any chance that it would pass in its original form. St. John argued strongly for it, claiming that bishops had plotted treason since the days of St. Augustine and had always opposed reform. He also argued against lesser officers such as deans and chapters.[57] But, few who wished to preserve monarchy in the state were willing to see democracy introduced into the church.[58] The bill was the most innovative that had come before the two houses because its effects were so wide reaching. The very concept of Root and Branch involved rejection of the reparation of the old, and advocated something new. As Vane put it:

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[56] Rev. Lambert B. Larking, Proceedings in Kent 1640, Camden Society 80 (1861), pp.xxxviii-xl, 26-28; Rushworth, III-I, 39-40, 55, 278-279, 283, 293-296; Clarendon, I, 313-315.

[57] Harl. 163 f.321 (YCPH Typ); Fletcher, Outbreak, p.106.

[58] For example see B. Rudyerd's and Harbottle Grimston's speeches on February 9. Rushworth, III-I, 173-174, 183, 187.

> ...old things are to pass away, and all things are to become new; and this we must do if we desire a perfect reformation...[59]

Edmund Waller expressed fear at the potential social effects and divisiveness which might result from entering into such an experiment. He worried that if the thousands of people who had signed petitions,

> ...prevail for an equality in things ecclesiastical; the next demand, perhaps, may be lex Agraria, the like equality in things temporal.[60]

Because of this fear, Dering quickly backtracked on his original support for the bill. He repudiated his introduction of the bill and called for moderate reform, expounding a plan for a primitive form of episcopacy.[61] Clarendon, Selden and others used delaying tactics to confuse the issue, and debate soon bogged down in a mass of detail. Vane came up with a fairly popular provisional plan which would have given interim control of the church to the local gentry, but this came to nothing. By August 3 the bill had grown from less than one page to over forty, and at this point debate was abandoned.[62] Instead it was decided to impeach the thirteen bishops who had drawn up the canons in 1640.[63]

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[59] Cobbett, Parliamentary History, (London 1807), II, 824.

[60] Ibid., p.827.

[61] Lamont, Godly Rule, pp.90-93; Ashton, English Civil War, pp.154-155; Rushworth, III-I, 293-296.

The question of church government was not taken up again until after the commons recess, and at this point St. John and his associates abandoned their all out attack on episcopacy and instead concentrated on the bishops. When the commons, in an unusual action, introduced a second bill to take away bishops' votes in the same parliament, St. John and Pym argued the new bill in front of the lords. They asked that the bishops should be prevented from voting on the new bill for the very reasons put forward in it. They were asking the temporal lords to prejudge the matter for this one special case. There was no procedural precedent for this, it was obviously political, but the lords were not yet prepared to be bullied into voting again on a bill they had already defeated. St. John continued to press for the impeachment of the thirteen bishops and for the removal of all bishops from parliament. During December, Westminster was again besieged with crowds of people this time shouting for no more bishops. Williams had his cloak torn from his back, and eventually most bishops were frightened away from parliament. On December 29 they drew up a Petition and Protestation in which they claimed that anything done in parliament without their votes was void, which gave the commons leaders the opportunity to charge them with high treason, and they were soon in prison. After this the tumults ceased, and St.John presented a speech explaining the charges against the bishops.[64] Here again a link is apparent between St. John's position and the demands of the London crowd. His support of Root and Branch and his subsequent pursuit of the bishops demonstrates that his religious position was as radical as his political ideas.

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[62] Fletcher, Outbreak, pp.102-107.

[63] Rushworth, III-I, 359.

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[64] The Substance of a Conference at a Committee of Both Houses in the Painted Chamber, October 27, 1641, (London, 1641); Master St. John, His Speech in parliament on Monday January the 17th 1641 Concerning the Charge of treason then exhibited to the Bishops, (London, 1642); Rushworth, III-I, 395-396; Willson H. Cotes (ed.), The Journal of Sir Simonds D'Ewes from the First Recess of the Long Parliament to the Withdrawal of King Charles from London, (New Haven, 1942), pp.27-28, 42-43, 139; Willson H. Coates, Anne S. Young, Vernon F. Snow, (eds.), The Private Journals of the Long Parliament, (New Haven, 1983), pp.416, 419-420, 424, 433-434, 437; Clarendon, I, 404, 452-456; Manning, English People, pp.63-101.

Three years later it was St. John who first rose in the commons to urge the house to provide some measure of support for the Independents in the Westminster Assembly. He recommended that the Committee of Both Kingdoms and the Assembly,

> ...take into consideration the differences in opinion of the members of the Assembly in point of church government; and to endeavor a union if it be possible; and, in case that cannot be done, to endeavor the finding out some ways how for tender consciences who cannot in all things submit to the common rule ...may be borne with...[65]

Up to this point he had supported the covenant for military purposes; in order to forge the alliance between the Scots and the English in the dark days of 1643 when the king held the upper hand. But with the victory of Marston Moor in early July 1644 and the great increase in Cromwell's reputation as parliament's outstanding commander, the military alliance with the Scots became much less important. The Scottish army had done its job but was not the effective fighting force St. John and other parliamentary leaders had hoped for. Cromwell was an Independent and many of his troops were either Independents, Brownists, or members of other sects. With his ascendancy a more tolerant religious position could be supported against the demands of the Presbyterians. It was no accident that St. John rose to support toleration on the same day that the commons extended a special congratulation to Cromwell, back in London for the first time since Marston Moor. St. John continued to support Cromwell in the developing struggle with the worried Earl of Manchester. The shift away from the Scots was something St. John wanted to do now that Cromwell's army could be used to support more radical policies. A shocked Baillie reported St. John's sudden shift:

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[65] CJ, IV, 626.

> While Cromwell is here, the house of commons, without the least advertisement to any of us, or of the Assembly, passes an order, that the grand committee of both houses, Assembly, and us, shall consider of the means to unite us and the Independents; or ...to see how they may be tolerated.... Our greatest friends, Sir Henry Vane and the Solicitor, are the main procurers of all this; and that without any regard to us, who have saved their nation...[66]

Now that episcopacy had been eliminated, the three men who had originally brought the root and branch bill into the house were again cooperating to advocate some amount of toleration against the more conservative solution of Presbyterianism.

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[66] Baillie, II, 230, 235-237; Lawrence Kaplan, Politics and Religion during the English Revolution, (New York, 1976), pp.50-64.

VII. CONCLUSION

A major biography of St. John would be fascinating, extremely valuble, and very long. His adult life spanned from the mid 1620's to 1673, During which time much water passed under the bridge and over many rapids. St. John moved constantly in this stream of events, and a great deal remains to be said about his adult life. In a number of ways, the autumn of 1641 is a convenient place to bring this part of his life to a close -however artificial it might be in the long run. After debate on the Root and Branch bill bogged down in mid July the two houses were able to bring a number of their grievances together into solid legislation and pass bills against: royal forest laws, the billeting of soldiers in York and adjacent counties, distraint of Knighthood, Star Chamber and Council Table, the Stannary Courts, and ship money. The King's departure for Scotland also created a number of administrative problems which had to be dealt with. By September most M.P.'s who had stayed in London felt they needed an opportunity to return home, so they voted themselves a recess -although a very important committee, including St. John and Pym, remained standing to keep watch on the government.[1]

When parliament reconvened on October 20, the Irish revolt threw the issues of sovereignty and power into sharp relief. The emotional response to a catholic enemy was high, and when parliament took up the task of directing the war questions about the prerogative naturally arose. It was finally necessary for parliament to make a coherent, official statement about what abuses had been committed, and what needed to be done to prevent the same from happening again. The result was the Grand Remonstrance, drawn up and argued for by the leading opponents of Charles' government. Debate over its provisions finally polarized a parliament that had already been sliding rapidly from the old hopes of consensus. Members who were wary about how far the opposition leaders wanted to take the country towards a change in government -and possibly a change in society if they lost control -or towards unending acrimonious conflict- had no choice but to speak out against the Grand Remonstrance. The fact that it passed by only 11 votes, coupled with the King's response to the actions of the crowd in November and December, led the opposition leaders to fear that some kind of action might be taken against them. The militia bill was introduced and the stage was set for the events which finally caused Charles to leave London for good.[2]

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[1] SR, V, 110-112, 115-120, 131.

St. John played an important role in this process. He laboured to have the Court of Requests declared illegal in the Remonstrance - which was ultimately omitted because of opposition, and worked with Pym, Goodwin, and Strode to have part of the Remonstrance petition the king to give parliament the power of removing privy counsellors, and approving new ones.[3] He also continued to oppose the power of the bishops, but his most important action during these months was the introduction of the first militia bill on October 7. Again this was done from the gallery, this time by Haselrig (whom Clarendon claimed was used like the dove out of the ark, "to try what footing there was"). For some time the commons had been concerned about whether they had the power to protect themselves with their own guards, and had already clashed with the lords over the issue.[4] St.

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[2] For a summary of this transition see, Ashton, Civil War, pp.140-156.-L.G. Schwoerer, "The fittest subject for a King's Quarrel: An essay on the Militia Controversy 1641-1642," Journal of British Studies, 11 (1971), pp.45-49.

[3] D'ewes (C), pp.44-45, 94, 101, 105, 112.

[4] Schwoerer, "Militia Controversy," pp.52-53.

John's bill went far beyond this question by suggesting all the trained bands in the kingdom should be put under a Lord General with the power to raise and command men, levy money to pay them, and to execute martial law. No person, or time period was named in the bill, instead blanks were left. The reaction was immediately hostile. Some claimed it deprived the king of his lawful prerogative, and many cried for it to be cast out.[5] St. John was forced to rise and defend his bill. He rightly claimed that power over the militia was not by law vested in any person, nor in the crown, and urged the house to consider where this great power should properly lie.[6] By taking advantage of the house's fear for its own security he was able, in a round about way, to question the whole established notion of prerogative rights: that they were inherent in the king and not granted by law. This was an attempt to shift the ultimate sovereignty in the state to parliament and its laws. St. John claimed:

> That the king hath not the power in his crown.... To turn a commission into an act of parliament is no derogation of the king's prerogative. The difference between an act of parliament and a commission; that arbitrary changeable which an act of parliament is not.[7]

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[5] D'ewes (C), pp.244-245; Clarendon, I, 365.

[6] Clarendon, I, 345, 366.

[7] D'ewes (C), p.245.

The king naturally saw things differently, but the question was not pursued at this point. It only became an issue in the spring.[8]

St. John's militia bill is a good place to stop and look backwards, for it was entirely in keeping with the ideas he had been proposing since 1637. His theory of the English state went a great distance towards republicanism without actually taking the revolutionary step beyond kingship. St. John believed in the supremacy of the law, not the king, and he placed sovereignty in parliament, not the monarchy, because it was the representative body of the kingdom. In this way he anticipated Parker's claim that sovereignty ultimately resided in the people. Parliament was the highest court in the land where all legislation was made, and all doubtful law ultimately judged. He did not deny the king his place in parliament, but both his actions and words show that he felt the real power resided with the lords and commons. He suggested they could legislate without the king, but the king could not do so without them, and he did not shy from threatening the king's life when it came to having his attainder bill passed. His was a contract theory of monarchy; he felt that the king's authority had a useful executive function, but that it needed to be defined by law and executed for the common good. This power would ,thus, ultimately be controlled by parliament. Much later, in the Commonwealth, when he was called upon by parliament to urge Cromwell to abandon the potentially arbitrary office of Protector he repeated this argument in very clear terms:

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[8] It is interesting to note that one of those who supported St. John was Sir Simonds D'ewes, who is constantly touted as a firm conservative with an unswerving, and at times ridiculous, loyalty to the common law. Here he claimed that the power vested by the bill was of too great an extent, but naively did not worry that it might be derogatory to the king's power, because ultimately he would have to assent to it. What is more interesting is his claim that upon urgent necessity, liberties could be taken from the subject by common consent in parliament, which shows that at this point he did not fear throwing off the yoke of precedent. D'ewes (C), p.245.

> ...some may pretend, a king's prerogative is so large, that we know it not, it is not bounded; but the parliament are not of that opinion. The king's prerogative is known by the law, [Charles] did expatiate it beyond the duty; that's the evil of the man. But in Westminster Hall the king's prerogative was under the courts of justice, and bounded as well as any acre of land, or anything a man hath...[9]

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[9] "Monarchy Asserted to be the Best, Most Ancient and Legal form of Government," in Somers Tracts, (ed.) Sir Walter Scott, (London, 1810), VI, 359. Professor Hexter has correctly pointed out that this speech was St. John's and not Glyn's as Scott claimed. St. John was clearly the senior judge in 1657, when the speeches were made, and the ideas expressed therein are his. Hexter, The Reign of King Pym, p.167n.14.

The whole nature of the Tudor state was changed in his theory. The idea of legally defined and recorded contractual obligations brushed aside the old notions of trust and reciprocity, and the balance of mixed monarchy was tipped towards its democratic side.

St. John's retention of a monarchical executive was undoubtedly a response to the profound problem which contemporaries saw in republicanism -the unending and indecisive conflict of ideological factions- which ultimately bedeviled the whole period during which parliament controlled the government. But by assuming that the king was under the law and could be judged in Westminster Hall, St. John ultimately left the door open for conflict in the state -a door that would be slammed shut by Thomas Hobbes when he choose to invert many of the concepts St. John was working with.

Both his actions and his ideas mark St. John as the most important radical in parliament through 1640 and 1641. Henry Martin told Clarendon in the summer of 1641 that he was a republican, but he mentioned this to no one else, and his role in the commons at this time was small.[10] There were other "fiery spirits" in the house such as Peard, Grimston, Pym, and initially Digby, together with firm but cautious opponents like D'ewes, Falkland and others, but none of them tried to organize reform to the same degree as St. John, and none of them put forward such far reaching political ideas. Compared to the others who were initially involved in leading the push for reform, such as Pym, Hampden, Holles, Strode, Glyn, Maynard, Hyde, and Whitelocke, St. John was the only one who never hesitated when radical measures threatened to divide parliament. In fact, he proposed the most radical and divisive measures which Charles later claimed went beyond reformation to attempt an alteration of government. St. John's statement at the end of the Short Parliament is indicative of the gulf that separated him from just about everyone else during these years: he knew what he wanted, and what needed to be done to achieve it. On numerous occasions he showed his impatience with those, like him, that wanted reformation but were reluctant to go as far as he thought necessary.

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[10] C.M. Williams, "The Anatomy of a Radical Gentleman:
(Footnote Continued)

St. John's attitude towards the king and his prerogative also differentiates him from the other leading opponents of the government. Rarely in his speeches did he

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(Footnote Continued)
Henry Martin," in Donald Pennington and Keith Thomas, (eds.), Puritans and Revolutionaries, (Oxford, 1978), p.120.

make the customary apologies or submissions to the king's good intentions. Instead he made a number of rude metaphors about Charles, talked freely about his death, and compared his reign to that of Richard II. It can not be said he was ambiguous in his role as Solicitor: a servant of both parliament and the king at the same time.[11] Quite the opposite, he used the respect given the office to manipulate many to accept more radical action. His argument for Strafford's attainder, for instance, is not evidence that St. John could not act unless he believed what he was doing was entirely legal according to past practice. This shows a misunderstanding of how lawyers argue. He wanted Strafford executed, and he found the law to prove his point. He believed in the force of the law, but he always advocated it was open to a wide degree of interpretation by parliament. As Solicitor he did almost nothing to serve the king and everything to oppose him.[12] By itself this is enough to

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[11] Pearl,"The 'Royal Independents,'" p.76.

[12] The one service St. John did for the king was to press the house to pass bills for the collection of tonnage and poundage. But even here the service he performed was limited. The first bill for tonnage and poundage, which he drew up, claimed that it had been collected illegally in the 1630's, and could only be collected in the future by common consent in parliament, which swept away the judgement in Bate's case. Further, the acts were only passed for two month periods, and they reorganized the basis of collection. Parliament was given the responsibility of collection

(Footnote Continued)

show his indifference, or even contempt for the person of his king, but St. John went further than this. In December 1641 the lords rejected the commons' impressment bill to raise soldiers for Ireland because it attempted to transfer the right of impressment from the king to parliament. In response the commons attempted to force the lords and king to agree to the bill by halting their preparations to put down the revolt. As more horror stories flowed in from Ireland, the commons were in a bind to know what to do before the king decided to act on his own. To prevent this from happening St. John went to the king and tricked him into making a foolish mistake. He lamented about how troubled he was that the commons refused to deal with

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(Footnote Continued)
and the power of disbursing it out to the king's household or the navy as it saw fit. Perhaps St. John had already begun his association with Henry Vane jr., who was Treasurer of the Navy by this time. Finally, in January of 1642 the king commanded St. John to bring a bill into parliament granting him tonnage and poundage for life. St. John worked with Pym and Holles to have it thrown out. He claimed the bill was his own and his friends replied that it was a breach of privilege for any member to bring in a bill of subsidy without special order of the house. As a result the bill was thrown out. D'ewes later wrote that he had "imagined nothing audaciously in this for that crafty Solicitor, whom I thought very honest otherwise." Harl. 163, f.305, 420b, 422b; Harl. 164, f.1b, 12a, 16b, 17a; D'ewes (C), pp.216-217, 267; Private Journals of the Long Parliament, pp.111, 145, 175-176, 179, 183, 184-186, 187, 191, 219; SR, V, 104-105; Conrad Russell, "Charles I's Financial Estimates for 1642," Bulletin of the Institute for Historical Research, 58 (1985) pp.109-119.

Ireland, when in reality he had argued strongly for the impressment bill. He advised the king to come to both houses and and end debate on his prerogative for the time being by urging the bill be passed right away with a salvo jure. St. John knew this would be a breach of privilege, that would upset the lords and help bring them around to the commons' position. The trick had the desired effect. The king made his speech, and afterwards both houses agreed to petition him to say he could not come to parliament and speak to any matter under debate until it had passed both houses. As a result the lords, and finally the king, assented to the bill.[13] Such blatant manipulation is not indicative of any respect. Soon afterwards the king resolved to replace St. John, who had "disserve[d] him notoriously," with Hyde, but the latter refused.[14]

In the years to follow St. John's stature remained high in parliament. He refused to follow the king to York, and remained Solicitor in the name of parliament. As pointed out, Valerie Pearl has argued that upon Pym's illness and death in late 1643, St. John assumed leadership of the so called middle group in parliament. The idea of the middle group was first suggested by S.R. Gardiner and brilliantly developed by J.H. Hexter.[15] In Hexter's opinion the middle group was formed after war broke out and consisted of those men sandwiched between the war and peace parties, and later the Independents and Presbyterians. This group was a loose collection of undecided men of ephemeral loyalty. They were conservatives who had been thrown into the war by force of circumstance. Pym, their leader, was symbolic of what they wanted to achieve. Their aim was the moderate constitutional reform hoped for by many in 1640 and 1641. They did not want to alter the state but merely protect themselves from the prerogative. They had no ideals: their actions were haphazard and pragmatic. They wanted to negotiate with the King, but would not settle for anything less than the proposals put forward in the Grand Remonstrance.[16]

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[13] Clarendon, I, 438-442; D'ewes (C), pp.262, 286-289, 297, 298; Rushworth, III-I, 457-458.

[14] Clarendon, I, 460.

Given all that St. John did and said from 1637-1641 it would not seem likely that he would fit with such a group. He had a firm idea of how he wanted the government to be organized, had no respect for the King's prerogative, and was only given to moderation when necessary. Gardiner labeled him "unrelenting," and Hexter claimed that he was a leader of the Independents.[17] But Professor Pearl, believes that St. John was indeed a conservative of the middle group stamp -a man driven to make radical claims only by the inexorable impetus of revolution. As evidence for this she cites St. John's political connections with Pym, his cousin Samuel Browne, Glyn, Saye and Sele, and other middle group people. His policy to bring in the Scottish army, and to push the covenant through the Westminster Assembly is seen to be a continuation of Pym's. He is also shown to be a firm supporter of the Earl of Essex.[18] It would take a great deal of research to deal with this view in depth, but there are grounds to raise significant questions. This was certainly not St. John's position before war broke out, and it was not his position after 1643. True, he had many friends in the middle group, but he was also associated with Haselrig, Vane jr., Strode, and Cromwell. Further, his policy of pushing for a Scottish alliance in the summer of 1643 was not something the war party was hostile to. Parliament's military fortunes were at their lowest ebb, and the policy of bringing in the Scots and taking the covenant was one of survival. With Pym's sickness, Vane and St. John became the leading proponents of the alliance. Vane, the war party man, led the parliamentary delegation in Scotland to negotiate the alliance while St. John prepared to push it through parliament. Both worked to reduce the conditions of the covenant, in the words of St. John, "to give relief to those tender consciences who scruple to take it," and both betrayed the Scots after the victory of Marston Moor.[19]

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[15] Gardiner, History, IX, 99-100, 223-224, 352-353, X, 39; Hexter, King Pym, ch.

[16] Ibid., pp.160-190; Pearl, "St. John," pp.492-493; Ashton, Civil War, pp.194-197.

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[17] Gardiner, History, IX, 223; Hexter, King Pym, pp.34, 74n.25, 98, 103, 168n.15.

[18] Pearl, "St. John," pp.500-515.

Recently, much evidence has also been put forward to show that St. John did not continue Pym's policy of supporting the lethargic Earl of Essex, who was by this time in favor of peace negotiations, and unwilling to press the war vigorously against the king.[20] St. John probably supported Essex early in the war, as they had been fairly close, but by the time of the latter's death they were almost certainly estranged. It was reported that St. John was a well known enemy of the Earl by this time. In 1642 he had been appointed an executor of the Earl's will, and after his death he used an ordinance of parliament to prevent a debt of 4,550 pounds from being sent to the Countess of Essex (who was a royalist at Oxford), which was owed to her by the arrangement she made with her husband to have 1,300 pounds yearly from his estates when they agreed to separate in 1636. She was labeled a delinquent, and instead the money was given to the Earl's servants. The executors claimed administration of the goods, and St. John was accused of taking the estate of Godmanchester for himself.[21]

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[19] Ashton, Civil War, pp.201-203; Pearl, "St. John," p.500.

[20] John MacCormack, Revolutionary Politics in the Long Parliament, (Cambridge Mass., 1973), pp.20-44; Violet A. Rowe, Sir Henry Vane the Younger, (London, 1976), pp.37-39, 42-44, 49-50, 59; Kaplan, Politics and Religion, pp.27-28. Hexter was also of the opinion that St. John was an enemy of Essex, but unfortunately he did not provide the evidence upon which he based this view. Hexter, King Pym, p.168n.15.

A speech St. John made before the London Guildhall in October 1643 contains much evidence to suggest he was one of

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[21] "Inventory of the Goods of the Earls of Northumberland and Warwick and Oliver St. John, 1646," Huntington Library: Hastings Collection, HA Inventories: Box 1 (20); HMC Bath at Longleat, IV, 274, 349-350; HMC Twelfth Report, pp.175-176; Snow, Essex, pp.311-312. Responsibility for the payment of the 1,300 pounds per year to the Countess fell upon the Dutchess of Somerset (Essex's sister) and her son Robert Sherley. She became engaged in a lengthy lawsuit against the Countess's husband, after the former's death, to have the lease for the 1,300 pounds delivered up. He refused because he had never been paid the 4,550 pounds taken by St. John's ordinance. The Dutchess blamed this on St. John as he retained possession of the estate, but she never got a penny from him. In 1666 she was finally awarded administration of the goods of her brother by a decision in King's Bench, and permitted to pursue St. John for a debt of 25,000 pounds, but he had fled abroad. Nothing ever came of this. St. John was able to keep his will, if he wrote one, from the hands of his enemies. CSPD 1667, pp.283-284; HMC Bath at Longleat, IV, 256.

Professor Underdown's "honest radicals."[22] He went very far with his radicalism, considering his audience likely desired peace.[23] He warned that if the malignant party of prelates should win all religion, laws, and liberties would be lost. Parliament would be overwhelmed and there would be no means for London to protect its charter. He stated that the two parties were equally balanced, and only a military victory could bring the war to an end. An indecisive victory would not be enough, for if the malignant party were not beaten and forced to pay most of the war debt, they would wait for a second opportunity to defeat the godly cause -which would soon appear if the nation were forced to bear the whole burden of the war debt through general taxation. He opposed peace negotiations, arguing by means of his favorite metaphor, that if the disease were not wholly expelled, it would break out later in dangerous blotches and endanger the aims parliament was fighting for. He pointed to the evil effect of divisions in the time of their ancestors: how often Magna Carta had been broken by the enemies of parliament when there was no means of enforcing it. The ending was dramatic:

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[22] David Underdown, "'Honest' Radicals in the Counties, 1642-1649, in Puritans and Revolutionaries, pp.186-190.

[23] Pearl, "St. John," pp.501-502.

> ...if [the cause] does not survive... I know not what reason we have to desire to survive it... the cause is god's... we have all of us, both parliament, City, and all well-affected subjects of this kingdom, we have put our shoulders to it... we do not repent of what we have done.[24]

Nothing definite can be said, but it seems more likely that St, John was a member of the war party, whose pragmatism caused him to retain his ties with Glyn and others who were members of the middle group. St. John was the most important leader of parliament during these years, and he realized that some amount of unity had to be maintained.[25] Once Cromwell's successes changed this picture, St. John was able to pursue a more consistent war party policy.[26] He aided Cromwell in his fight against Manchester, and helped to push the Self-Denying Ordinance through parliament, arguing it before a recalcitrant house of lords.[27] From 1648 he remained close to Vane and

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[24] Four Speeches Delivered in Guild-Hall on friday the sixth of October, 1643, pp.1-16.

[25] In September, 1644 Baillie commented, "This is a very fickle people; so wonderfully divided in all their armies, both their houses of parliament, Assembly, City, and country, that its a miracle if they fall not into the mouth of the king." Baillie, II, 236.

[26] David Underdown, Pride's Purge, (London, 1971), pp.71-72; Rowe, Vane, ch.3.

[27] CJ, IV, 13; LJ, VII, 129; Memoires of Denzil Lord Holles 1640-1648. (London, 1699), pp.35-36; Baillie, II, (Footnote Continued)

Cromwell. He continued to sit on the Committee for Both Kingdoms, which he and Vane originally put together, and as he held the offices of Solicitor and Attorney-General, and was on the committee for the Great Seal, he stood at the apex of the administration.[28]

Together with Vane and Cromwell, St. John was attacked by Lilburne and the Levellers for not taking England far enough down the path of revolution, but when a group of counter-revolutionary apprentices attacked parliament to force the commons to invite the king back, St. John went over to the army for protection.[29] He retained his seat in the Rump, but took no part in the king's trial because in November of 1648 he had been appointed Chief Justice of the

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(Footnote Continued)
247; A.N.B. Cotton, "Cromwell and the Self-Denying Ordinance," History 62 (1977), pp.226-230.

[28] An Ordinance of the Lords and Commons Assembled in Parliament for Master Solicitor's doing, all Acts which ought or may be done by Mr. Attorney-General, (London,1645); Clarendon, III, 251; CJ, III, 390, 391-392; Rowe, Vane, pp.36-38, 88-89, 95-96.

[29] The Diary of John Harrington, (ed.) Margaret F. Stieg, Somerset Record Society 74 (1977), pp.45, 55-56, 58; The Hamilton Papers, (ed.) S.R. Gardiner, Camden Society, New Series, 27 (1880), pp.148-149; Calendar of Clarendon State Papers, (eds.) O. Ocle and W.H. Bliss, (Oxford, 1872), I, 383; Underdown, Pride's Purge, p.83; Biographical Dictionary of British Radicals in the Seventeenth-Century, (eds.) Richard Greaves and Robert Zaller, (Brighton, 1983), II, 184-185: Rowe, Vane, pp.90, 96.

Court of Common Pleas.[30] He remained close to Cromwell, and played an important role in the commonwealth both as a member of the Council of State and as a judge.[31] After Oliver's death it was reported that St. John managed Richard Cromwell's government.[32] He was very active in these troubled years, attempting unsuccessfully to preserve some kind of stability to ward off the commonwealth's demise. It was thought he would be tried and executed at the restoration, but ever the politician, he used his popularity to have parliament pass an act of indemnity protecting him and his friends, and he published a self-serving defence whitewashing all of his actions after 1648.[33] He remained unhappy under the new king, and fled the country in 1662 to live the rest of his years in exile.[34]

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[30] Underdown, Pride's Purge, p.113.

[31] Clarendon, V, 260; Thomas Birch (ed.), A Collection of the State Papers of John Thurloe, (London, 1742), I, 205-206, IV, 277; John Nickolls (ed.), Original Letters and Papers of State Addressed to Oliver Cromwell, (London, 1742), pp.24-26, 48.

[32] Clarendon State Papers, IV, 116, 118, 146.

[33] The Memoirs of Edmund Ludlow, (ed.) C.H. Firth, (Oxford, 1894), II, 97-98, 290; The Case of Oliver St. John Esq., (1660), p.3

[34] CSPD 1661-1662, p.567.

Clearly there is much more to be said about this careful radical. St. John was an intellectual who relied on planning, and his life does not have the personal drama of Cromwell's, even if he did believe he was managing God's cause. All of his actions will have to be studied very carefully to discover his ultimate relationship to the commonwealth. We should expect no lightning stroke of revelation of the sort that illuminates Cromwell's intentions; but to add some oil to this "dark lanthorn" of the Seventeenth-century would certainly chase away many of the shadows.

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